

Exhibit B

Alabama Gas Corporation v. Travelers Casualty, et al.
Kathleen Robison

2:10-CV-1840-IPS
November 2, 2011

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

- - - - - x
ALABAMA GAS CORPORATION, :
Plaintiff, :
v. : 2:10-CV-1840-IPS
TRAVELERS CASUALTY AND SURETY :
COMPANY, et al., :
Defendants. :

- - - - - x

Deposition of KATHLEEN ROBISON
Washington, D.C.
Wednesday, November 2, 2011
9:00 a.m.

Job No.: 80833
Pages 1 through 122
Reported by: Cassandra E. Ellis, RPR

1 Deposition of KATHLEEN ROBISON, held at the
2 offices of:

3
4 STEPTOE & JOHNSON

5 1330 Connecticut Avenue, Northwest

6 Washington, D.C. 20036

7 (202) 429-3000
8
9

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11 Pursuant to agreement, before Cassandra E. Ellis,
12 Registered Professional Reporter and Notary Public of
13 The District of Columbia.
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A P P E A R A N C E S

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E X H I B I T S

(Attached to the Transcript)

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P R O C E E D I N G S

KATHLEEN ROBISON

having been first duly sworn, testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF ALABAMA GAS
BY MR. LASETER:

Q Good morning, is it Ms. Robison or Robison?

A Robison.

Q Robison? Thank you. My name's Scott
Laseter. We met a moment ago, I'm an attorney for
Atlanta -- excuse me -- Alabama Gas Corporation. We
refer to Alabama Gas Corporation as Alagasco, would
that be okay with you?

A That would be okay with me.

Q Also in this matter we have referred to the
defendants, together, as Travelers, if I refer to the
insurance carrier all as a single entity, as
Travelers, would that be okay with you?

A That's okay.

Q Are you aware that this deposition is in a
lawsuit in which Alagasco is seeking coverage from
Travelers for environmental costs in Huntsville,
Alabama, MVP Street?

A Yes.

Q When were you engaged in this matter?

A I believe I was engaged in August of, let's

1 see, August of this year.

2 Q Would you have -- a -- an engagement
3 agreement?

4 A Yes.

5 MR. LASETER: Frank, we've been exchanging
6 those, can I get one at -- a copy of that at the
7 break?

8 MR. WINSTON: I'll see if I can do that,
9 yeah.

10 BY MR. LASETER:

11 Q When did you start work on the matter?

12 A The end of August, I believe.

13 Q That's August 2011?

14 A Yes, sir.

15 (Discussion held off the record.)

16 BY MR. LASETER:

17 Q How many hours, total, would you say you've
18 spent on this matter?

19 MR. WINSTON: Objection, relevance.

20 A Let me mentally calculate that a minute.

21 Q Mm-hmm.

22 A It would be in excess of 50.

23 Q Would it be less than a hundred?

24 A Yes, it would be less than a hundred.

25 Q Did anybody else at your firm assist you in

1 this matter?

2 A No one else.

3 Q And aside from counsel for Travelers did
4 anybody outside of your firm help you in this matter?

5 A No one else.

6 Q Within that 50 to a hundred hours you've
7 spent on the matters so far what are the tasks that
8 you've accomplished?

9 A I've read the documents, which there were
10 many, I've completed an opinion letter, and I've done
11 some review and now some travel time.

12 Q Now --

13 MR. WINSTON: Off the record for a minute,
14 please.

15 (Discussion held off the record.)

16 MR. WINSTON: Okay.

17 BY MR. LASETER:

18 Q And I assume you will admonish us if we
19 don't speak loud enough? I sometimes get quiet, too.

20 When you said you did some review do you
21 mean simply going back over -- your -- your materials?

22 A Yes, I did some review.

23 Q Anything else?

24 A That would be it.

25 Q Did you have any meetings with counsel for

1 Travelers?

2 A We met yesterday.

3 Q Had you met at any other time?

4 A I hadn't met him.

5 Q Did you have any phone conferences?

6 A We had a couple of phone conversations.

7 Q Anything else that you can recall, sitting
8 here today?

9 A No.

10 Q Within that universe of roughly fifty to a
11 hundred hours how much of that did you spend, as best
12 you know, on the review of documents?

13 A The vast majority was on the review of
14 documents.

15 Q Eighty percent?

16 A That would be a good estimate.

17 (Robison Exhibit No. 1 was marked for
18 identification.)

19 BY MR. WINSTON:

20 Q Ms. Robison, I've put before you a document
21 marked as Exhibit 1, if you can take a moment and look
22 that over and let me know when you've had a chance?

23 A Yes.

24 Q You mentioned a moment ago that you
25 prepared an opinion letter, is Exhibit 1 that letter?

1 A Yes, it is.

2 Q If I slip into calling Exhibit 1 your
3 report would that be okay?

4 A I think that's a better term for it.

5 Q On page one of Exhibit 1 of your report,
6 down at the bottom, it identifies Exhibit B within the
7 report as documents that you reviewed and relied on,
8 can I get you to turn to Exhibit B with me?

9 And it appears that Exhibit B is a listing
10 of pleadings from the litigation, and then at the very
11 end, on page six, and over onto page seven, documents
12 and deposition transcripts; is that right?

13 A That is correct.

14 Q Do you know if this is all the pleadings in
15 the lawsuit?

16 A No, I do not.

17 Q How was this list compiled?

18 A This list was compiled from the pleadings
19 that were sent to me.

20 Q Were these sent to you in hard copy?

21 A They were sent to me both in hard copy and
22 electronically.

23 Q But you compiled the list on Exhibit B?

24 A Yes. Yes, I did. I -- I took -- I cut and
25 paste, but I verified that each one was.

1 Q And then at the bottom of page six there's
2 a series of letters and numbers, are those Bates
3 labels?

4 A That is correct.

5 Q Or Bates numbers?

6 A That is correct.

7 Q And did you get these documents in hard
8 copy?

9 A The vast majority of these documents I got
10 in hard copy. No, I'm sorry, let me -- these
11 documents I got in electronic. I'm not sure if I got
12 the documents that are starting with ALA, I'm not sure
13 if I got those electronic -- or -- or in the hard
14 copy.

15 Q And how about the document identified as
16 Munich Re Book?

17 A I -- I got that electronically.

18 Q And the four deposition transcripts that
19 are on page seven?

20 A Those were electronic.

21 Q The documents that you received in
22 electronic form, did you print them up?

23 A No, I did not.

24 Q The documents that you got in hard copy,
25 did you also get those as an electronic version?

1 A The ALA documents -- I -- I'm not sure.

2 Q With regard to the T documents, do you
3 understand that the T designates that that was a
4 document that came from Travelers' files?

5 A Yes.

6 Q Do you understand that the ALA documents
7 indicate that it came from Alagasco's files?

8 A That was my assumption.

9 Q Did you know where the Munich Re Book came
10 from?

11 A It was my understanding that the Munich Re
12 Book came from Travelers.

13 Q And I apologize if I've already asked this,
14 but with regard to the T documents, the ones that came
15 from Travelers, did you print those out?

16 A I might have printed out one or -- I -- a
17 -- a few here and there, but I did not print them all
18 out.

19 Q Okay. I'm -- I'm doing the math, the --
20 the total number of pages reflected in T documents is
21 on the order of 8500 pages; is that right? If you
22 need --

23 A There were a lot of them. I did not do the
24 math.

25 Q Did you review every page?

1 A I -- I looked at each page. I don't -- I
2 didn't review each page.

3 Q But you at least looked at every page; is
4 that right?

5 A Yes, I did.

6 Q Did you look at all the pleadings listed?

7 A I believe I did.

8 Q As -- as with the documents -- did you --
9 did you look at every page?

10 A Yes, sir.

11 Q Did you read every page?

12 A I didn't read the ones that were
13 repetitious.

14 Q With regard to the Bates labeled documents,
15 do you feel like you've made a sufficiently careful
16 examination of those to understand the contents?

17 A I -- I feel that I made a significant -- a
18 sufficient examination to understand the contents for
19 the area that I was -- asked to -- asked to opine on.

20 (Robison Exhibit No. 2 was marked for
21 identification.)

22 BY MR. LASETER:

23 Q Ms. Robison, I'm showing you a document
24 marked Exhibit 2, and I'll ask you a question about it
25 in a moment, but maybe to ask a precedent question,

1 turning back to page six of Exhibit B do you have an
2 understanding of where the various different ranges of
3 T label documents came from within Travelers?

4 A I think I do.

5 Q Can you tell me where that is?

6 A The ones that I first looked at, towards
7 the beginning of the T range, were from the Travelers,
8 what I term the 2008 file, and toward the -- toward
9 the middle, at one point, then it began to incorporate
10 the 1998 Travelers St. Paul file.

11 Q And do you know where that demarcation was?

12 A I -- I can't tell you the exact T number,
13 where that demarcation was, but -- it -- it was
14 evident that certain documents were older than the
15 others.

16 Q But -- as -- as you did your review you
17 were not aware of a particular page at which that
18 demarcation sat; is that right?

19 A As I sit here now I cannot remember if
20 there was a demarcation page or not.

21 Q Exhibit 2 is an e-mail that Travelers'
22 counsel sent to Alagasco's counsel providing a
23 demarcation, to the extent that you -- you know, does
24 the demarcation that they provided in Exhibit 2 match
25 your understanding?

1 A Well, the -- the first part of the doc, the
2 e-mail to you, what I call the first part, where it
3 says "pursuant to," and then it has three lines, those
4 are the documents that I received and reviewed, so
5 that's my understanding.

6 Q And -- and is it also consistent with your
7 understanding that the 1998 file, as you described it,
8 is also described in this letter, started at T003535
9 and went on through T008153?

10 MR. WINSTON: Objection, document speaks
11 for itself.

12 A I believe it does except that I think there
13 were a couple of documents right at the end that may
14 not have been with the 1998 file.

15 Q Do you recall what those documents were?

16 A No, I don't.

17 Q Was it evident from their date that they
18 couldn't have been from the 1998 file?

19 A I can't recall, at this point, but there
20 was something about them that led me to believe that.

21 Q And I think I understand this now, but if
22 you can turn to page five of your report, quickly,
23 you'll see that in the bottom paragraph there are a
24 couple of references to 4600 documents from the 1998
25 file, by the word document, there, do you mean pages?

1 A Pages, yes, sir.

2 Q Some of those pages may have all been part
3 of a single document and others were individual
4 documents?

5 A (Nodding.)

6 Q Is that right?

7 A Correct.

8 Q And do you understand that the 1998 file
9 was retrieved by Ms. Tarczanin -- that's T-a-r-c --

10 MR. WINSTON: -- z-a-n-i-n.

11 MR. LASETER: Thank you, Frank.

12 BY MR. LASETER:

13 Q -- Ms. Tarczanin in around early December
14 of 2008?

15 A Yes, I understand that it was somewhere in
16 the first third or I would say toward the end of the
17 first third of December.

18 Q Of 2008?

19 A Of 2008.

20 Q If I'm tracking that right, that would be
21 somewhere around the early part of the second week of
22 December?

23 A Yes. I'm thinking -- I'm thinking that it
24 would have arrived there about, for some reason, about
25 the seventh, eighth of December.

1 Q Do you have an understanding about the
2 origin of the other documents, that weren't part of
3 that 1998 file, that were listed on your report?

4 MR. WINSTON: Objection to form.

5 THE WITNESS: Could you repeat that?

6 BY MR. LASETER:

7 Q Yeah, I was trying to understand, I think
8 we've identified -- that -- that 4600 some odd pages
9 of the documents, that are identified with Bates
10 numbers on your report, were what we'll call the 1998
11 claims file, and I'm simply trying to find out if you
12 have an understanding of where the other documents
13 came from, the ones that aren't included with that
14 4600?

15 A Oh, okay.

16 MR. WINSTON: Objection, vague. Go ahead.

17 A Thank you, now I understand better. It is
18 my understanding that those came from the -- majority
19 of those came from the Travelers' 2008 claim file.

20 Q Going back to your review of these 85 or
21 8600 pages of documents, how did you physically do
22 that?

23 A I -- I received them electronically, on a
24 disc, put them into my computer, and I have a very big
25 monitor screen, now, and I sat there and I went --

1 reviewed each -- reviewed them as they came up.

2 Q So you just paged through them on the
3 computer?

4 A I paged through them on the computer.

5 Q Did you have to get that big monitor for
6 this case?

7 A No. But at the age that I'm getting I
8 thought it was a wise idea when my old monitor failed.

9 Q I have great sympathy for that, I now have
10 a magnifying glass on my desk.

11 MR. WINSTON: Off the record for a minute.

12 (Discussion held off the record.)

13 MR. WINSTON: We can go back on the record.

14 MR. LASETER: Yeah, that's right.

15 BY MR. LASETER:

16 Q How did you keep up with what you were
17 learning as you were going through the documents on
18 the computer screen?

19 A The documents that I thought -- were --
20 were relevant to what I had been asked to review, the
21 area that I had been asked to review, I did print off.

22 Q Mm-hmm. And you put those in files?

23 A I put those in files. Basically what I did
24 was I attempted to reconstruct the correspondence, the
25 claims, the claims type of file --

1 Q Mm-hmm.

2 A -- for the 2008 file.

3 Q And with regard to the 1998 materials, what
4 did you do with that?

5 A The 1998 materials, a lot of that was
6 underwriting, audits, et cetera. What I did with that
7 material, there were some documents, some of the
8 policy documents, policy forms, endorsements, those,
9 some of those I printed off.

10 Q Other than printing out documents did you
11 keep any other record of what you found to be
12 important?

13 A I had documents that I put together as the
14 claim file, policy information, and some documents --
15 that -- that indicated policy search.

16 Q Did you take notes?

17 A No, I did not take notes. Excuse me, I did
18 compile, I compiled a sheet that basically identifies
19 the people and who reports to whom, and key -- key
20 terminology, like SLCU.

21 Q Mm-hmm?

22 A And SLG, that type of thing.

23 Q But in terms of recording your impressions
24 of documents, as you went by, you weren't keeping
25 notes or any other record of that?

1 A No.

2 Q Is this methodology you employed to review
3 this file similar to methodologies you've used in
4 other matters?

5 A Yes.

6 Q Is this the same methodology that a claims
7 handler would use?

8 MR. WINSTON: Objection, vague.

9 A That, I don't know, because this -- I'm
10 looking at a lot of documents, and then I have a
11 different reason for looking at the documents, and so
12 sometimes the documents come in order and sometimes
13 the documents don't come in order. I prefer having
14 them electronic. And this is the methodology that I
15 developed that best suits me.

16 Q Do you know if this is a methodology that
17 other people in your line of work use?

18 MR. WINSTON: Objection, relevance.

19 A No, I don't.

20 Q I want you to turn to Exhibit A of document
21 number one; is this your CV?

22 A Yes, it is.

23 Q And I should have asked earlier, with
24 regard to Exhibit 1, are there any changes or
25 additions that you want to make to your report?

1 A Well, there are some typograph- -- typos
2 that I saw. There is one that I thought that I had
3 really reviewed this, and that is on page nine, second
4 paragraph from the top, the first line, that should be
5 0203, not 30, because February does not have 28 -- 30
6 days.

7 There are a couple of pages in here where
8 there should have been an apostrophe after Travelers.
9 And I think I missed one paragraph.

10 Q Other than typographical corrections any
11 additions or changes to the substance that you want to
12 make?

13 A No.

14 Q Turning back to Exhibit A, then, of
15 document one, it looks like that you've started in the
16 insurance business right out of college; is that
17 right?

18 A Yes, I did.

19 Q And you were a claims adjuster?

20 A Yes, sir.

21 Q What's a claims adjuster do?

22 A Companies have different terms for them.

23 Q Mm-hmm?

24 A Claims handling, claims adjuster, basically
25 assigned claims and review the claims, decide on

1 coverage, decide on the payment, settle the claim,
2 move onto the next one.

3 Q So as you use claims adjuster, on Exhibit
4 A, it has the same connotation to you as a claims
5 handler?

6 A Yes, it does, because back 40 years ago we
7 did not use the term claims handler. The word was
8 claims adjuster.

9 Q At State Automobile Mutual Insurance
10 Company, which is the first, the earliest employer
11 listed on your CV, what type of claims did you handle
12 there?

13 A Well, that was back in the early days, when
14 we were just getting into this business, so I was
15 allowed to take loss notices over the phone, schedule
16 appointments for the drive-in, and handle broken
17 windshield and stolen hubcap claims.

18 Q Anything else at State Automobile?

19 A Well, because the 11 outside adjusters were
20 male, and by the middle of the afternoon they were all
21 gone, yes, if other claims came up then we would go
22 into their files -- and -- and retrieve them and help
23 the customer, help the client.

24 Q Were all of the claims you handled for
25 State Automobile related to automobiles?

1 A No, they were basically personal lines and
2 main street business, so that would have been
3 automobile, homeowners, and small business owner
4 policies.

5 Q Any environmental claims that you handled
6 then?

7 A Not that I remember.

8 Q And I do recognize that was awhile ago,
9 so --

10 A Yes, it was.

11 Q The next one on your CV is INA; what is
12 INA?

13 A INA, at that time, was one of the oldest
14 insurance companies in the United States. It was the
15 Insurance Company of North America. They have about,
16 oh, I'd say 15 or 20 years ago merged with Connecticut
17 General, so it's now known as CIGNA.

18 Q And you identified yourself on your CV as a
19 claims adjuster for INA, as well?

20 A Yes.

21 Q What sort of claims did you handle there?

22 A Well, INA had -- the -- the ESIS accounts,
23 which is E-S-I-S, which was several insured or
24 accounts with high retentions, very, very high
25 deductibles. So at INA I was responsible for four of

1 those, those accounts, besides the other types of
2 claims that came in, and I remember three distinctly,
3 Kroger's, Borden's and Ashland Oil.

4 I would handle -- with them, I would handle
5 their product liability, vehicle accidents, property
6 damage, first-party property damage, third-party
7 property damage.

8 Q And while at INA did you handle any
9 environmental claims?

10 A I know with Ashland Oil we had some oil
11 spills.

12 Q Were those sudden event occurrences?

13 A If I remember correctly, most of them were
14 caused by an auto accident.

15 Q Do you recall any that involved historical
16 spills?

17 A No, I don't.

18 Q Do you recall any claims that you handled,
19 in that time period, that involved a search for
20 historical coverage?

21 A Not that I can recall.

22 Q The next company on your list is Dairyland
23 Insurance Company, where you were from 1976 to 1978;
24 what was Dairyland?

25 A Dairyland was and still is a non-standard

1 auto company.

2 Q What's a non-standard auto company?

3 A A non-standard auto company is a company
4 that sells insurance through people who cannot
5 normally get it through the normal channels, such as
6 Allstate, State Farm, Geico.

7 Q Are those normally high-risk accounts?

8 A They're high-risk accounts.

9 Q And am I correct to assume that the claims
10 that you would have handled at Dairyland would all
11 have been automobile related?

12 A Automobile, bodily injury, yes.

13 Q In 1978 you moved to Sentry Insurance
14 Company; is that correct?

15 A That's correct.

16 Q What did do you at Sentry?

17 A At Sentry I was an outside adjuster, so I
18 had a territory, thirteen counties, basically the
19 lower peninsula of Northeast Michigan, and I handled
20 personal auto, personal homeowners, business, worker's
21 comp, business property, product liability, completed
22 operations, liability.

23 Q If there's an outside adjuster does that
24 also mean there's an inside adjuster?

25 A Yes.

1 Q What is the distinction between an outside
2 adjuster and inside adjuster?

3 A Inside adjuster works at a desk, in an
4 office, and generally does not go outside to meet the
5 clients face-to-face or do -- they may occasionally go
6 out to a scene investigation, but an outside adjuster
7 is one that does their work at the scene, in other
8 words, climbs up on the roofs, goes into the burned
9 out buildings, visits the morgue, et cetera.

10 Q Now, is there a reason a claim would be
11 assigned to an outside adjuster versus an inside
12 adjuster?

13 A Claims such as a broken windshield can be
14 handled without going to the scene. So the more --
15 the more involved claims were, such as a fire or a
16 claim for a lot of damage to a roof would -- might be
17 assigned to an outside adjuster.

18 Q And while at Sentry Insurance Company do
19 you recall any environmental claims?

20 A I believe -- I believe I was -- I -- I --
21 my mind keeps going back to a site investigation I did
22 that I believe involved that at a -- at a waste dump
23 site, gathering information.

24 Q Can you recall where that was?

25 A I think it was outside of the Bay City

1 area. Although there were dump sites up around Mio,
2 Michigan, also.

3 Q Do you recall if that claim was presented
4 to you as an environmental claim?

5 MR. WINSTON: Objection, vague.

6 A I -- this was awhile ago.

7 Q Mm-hmm?

8 A And I handled a lot of claims then. I
9 can't recall.

10 Q Fair enough. Do you recall whether there
11 was an aspect of that claim that involved a search for
12 historical insurance coverage?

13 A I cannot recall that.

14 Q Can you recall any other Sentry Insurance
15 Company era claims, and by that I mean the 1978 and
16 '79 period reflected on your CV, that involved a
17 search for historical coverage?

18 A Not that I recall.

19 Q After 1979 you then moved to Citizen
20 Insurance Company; is that correct?

21 A That's correct.

22 Q Did you move to Citizens Insurance Company
23 as a claims manager?

24 A No. I initially went to Citizens as a
25 claims supervisor.

1 Q What's a claims supervisor do?

2 A As the claims supervisor I had four or five
3 adjusters reporting to me and that I reviewed and I
4 assisted them with their claims while I also handled
5 -- had assigned claims, myself.

6 Q What sort of insurance company, Citizens
7 Insurance Company, in other words, line of business is
8 it in?

9 A At that time Citizens only wrote in the
10 State of Michigan, so it was a one-state company, it
11 wrote 60 percent personal lines, meaning automobile
12 and homeowners, and 40 percent commercial lines.

13 Q Were there any particular types of claims
14 that you would have been responsible for while -- at
15 -- at Citizens Insurance Company?

16 A Basically, the claims that -- I -- I was
17 responsible for, either directly or indirectly, would
18 have been over that -- would have been the types of
19 claims -- all the types of claims that Citizens
20 received.

21 Q So in other words you didn't have some
22 specialty at Citizens?

23 A No, I did not have a specialty at Citizens.

24 Q And during that eight or so years that you
25 were at Citizens Insurance Company do you recall

1 environmental claims you handled?

2 A Yes.

3 Q Can you tell me about those?

4 A Because we insured commercial
5 establishments, particularly at this -- at this time,
6 historically, we were receiving claims. There were
7 such that -- there were environmental damage to land
8 being claimed to water, waterways, and also leaching,
9 leaching -- leaching from dumpsites.

10 Q Can you give me an idea of how many
11 environmental claims you might have handled?

12 A They -- they weren't the majority -- of --
13 of the claims. They were -- and in the scope of
14 everything it was a smaller percentage.

15 Q Would it have been, this is in order of
16 magnitude, less than ten or more than ten?

17 A I would say that it was -- I'm trying to
18 think -- and again, as I progressed at Citizens I had
19 -- I was overseeing more and more people, so that's
20 why I -- so more than ten, yes.

21 Q More than 50?

22 A No.

23 Q And of that somewhere between ten and fifty
24 claims how many of those claims have you been the
25 direct handler on as opposed to being in a supervisor

1 or management role?

2 MR. WINSTON: Objection to form.

3 BY MR. LASETER:

4 Q Do you understand what I'm asking?

5 A I lost my train of thought.

6 Q Let me try again. You identified, I think,
7 that the number of environmental claims was somewhere,
8 roughly speaking, between about 10 and 50, and I think
9 you also testified earlier -- that -- that you
10 progressed, while at Citizens, from being initially a
11 supervisor with a few direct adjusters under you, and
12 some personal responsibility for direct claims, went
13 up to being a manager where you had additional people
14 under you; is that right?

15 A That's correct.

16 Q And I'm trying to get an understanding of
17 this roughly 10 to 50 environmental claims that you
18 may have had involvement in, how many of those were
19 claims that you were directly responsible for as
20 opposed to ones where you were supervising others?

21 A They would have been where I was
22 supervising others.

23 Q So none of them were your direct
24 responsible claims, claims for which you had direct
25 responsibility?

1 MR. WINSTON: Object to the form, to the
2 extent that she's the supervisor I think she has
3 responsibility for the claim. You understand what --

4 MR. LASETER: And -- and I don't --

5 MR. WINSTON: If you understand what he's
6 asking you can answer the question.

7 A You're asking me -- if -- if my -- how many
8 claims I had day-to-day responsibility for with my
9 adjuster number on the claim file?

10 MR. WINSTON: Yes.

11 A And the answer would be, I believe, none.

12 Q And then I understand that you were a
13 supervisor, initially, and then became a claims
14 manager; do I have that right?

15 A That is correct.

16 Q When you were a claims manager how many
17 people were reporting to you? Let me ask a better
18 question. How -- how many adjusters were reporting to
19 you?

20 A First one was easier, the first one was
21 between 40 and 50, depending on timeframe. And I
22 would say that of that about 20 percent of the staff
23 was clerical functioning.

24 Q Mm-hmm?

25 A Then there were supervisors. There were

1 also appraisers.

2 MR. LASETER: Mm-hmm, I see. And as a --
3 as an aside, we can take a break whenever you like, my
4 watch is acting up this morning, but I tend to break
5 about every hour, but if I go on it may be because
6 this thing has stopped.

7 MR. WINSTON: You don't need a break now,
8 do you?

9 THE WITNESS: No.

10 MR. WINSTON: Okay.

11 THE WITNESS: I will let you know.

12 MR. WINSTON: As Mr. Laseter said, we'll
13 try to break about every hour just to stretch our
14 legs.

15 BY MR. LASETER:

16 Q Again, trying to understand your role in
17 the somewhere between 10 -- and -- and 50
18 environmental claims, can you give me a distinction as
19 between how many of those would have been while you
20 were a supervisor as opposed to how many of them would
21 have been when you were a manager?

22 A I would say the vast majority was when I
23 was a manager.

24 Q And do I also understand right that when
25 you were a manager there would have also been both a

1 supervisor and then an adjuster underneath you in
2 regard to those claims?

3 A In most cases, yes.

4 Q Did you have any direct claims handling
5 responsibility when you were a manager?

6 A When I was a manager in the Detroit area
7 office there were a couple claims that I was directly
8 responsible for, they were not environmental, they
9 were large, catastrophic injury type claims.

10 Q And then, in 1987, you moved to Luverne,
11 Minnesota?

12 A Yes, sir.

13 Q Is that right? Where is Luverne?

14 A Luverne, Minnesota is 18 miles due east of
15 Sioux Falls, South Dakota. So it is in the very
16 southwest corner of Minnesota, in Rock County. The
17 only county in Minnesota that does not have a natural
18 lake.

19 MR. LASETER: Off the record.

20 (Discussion held off the record.)

21 BY MR. LASETER:

22 Q And you were at Tri-State Insurance Company
23 then?

24 A Yes, sir.

25 Q And that's a W.R. Berkley company?

1 A Yes, sir.

2 Q And Berkley's a specialty loans company?

3 A No.

4 Q How would you describe them?

5 A Bill Berkley has built his companies with
6 three types of companies, they are one -- one -- one
7 part is what we would call standard insurance
8 companies, one is specialty type insurance companies,
9 and then the other part are service companies, service
10 insurance companies, third-party administrators,
11 specialize in work comp, that type of thing.

12 Q And which of those three categories did
13 Tri-State fit in?

14 A A normal insurance company.

15 Q What was its product mix?

16 A Tri-State Insurance Company's niche market
17 was agri business, schools, apartment buildings, and
18 some personal lines, it was hea- -- more heavily into
19 the commercial lines area, it wrote in North Dakota,
20 South Dakota, Nebraska, Minnesota, Iowa, and
21 Wisconsin.

22 Q Did you go to Tri-State as the vice
23 president of claims?

24 A Yes, I did.

25 Q And in that role what was your

1 responsibility?

2 A My responsibility was for the claims
3 operation. And as being a vice president I was on the
4 executive committee for the company.

5 Q How many people were reporting to you as
6 the vice president of claims, rough number?

7 A Indirectly, that -- that was a smaller
8 company. I believe it was approximately 50 people,
9 give or take a few.

10 Q And did you have any direct responsibility
11 for claims?

12 A I -- I had direct responsibility for the
13 claims because I was the vice president of the claims.

14 Q And I may have asked a bad question. I
15 understood that -- I -- I would -- am I correct to
16 understand that you were the officer ultimately in
17 charge -- of -- of all claims that came to the company
18 while you were there?

19 A Correct.

20 Q And what I meant to ask is whether you were
21 the sort of -- the -- the frontline person handling a
22 claim at Tri-State?

23 A So did I ever have any file -- claim files
24 that were specifically assigned to me?

25 Q Correct.

1 A Not that I recall.

2 Q Do you recall working on any environmental
3 claims at Tri-State?

4 A Yes.

5 Q Can you tell me about those?

6 A Tri-State, as I said, insured agri
7 business, so there were grain elevators, and also
8 insured oil dealers, petroleum dealers, et cetera,
9 yes, we had -- we had claims where -- the -- the
10 chemical -- the chemicals from the products being sold
11 used at the agri business got into the ground, into
12 the water supply, misapplied places, same with the
13 oil, oil delivery -- with -- with the normal spillage
14 that occurs when they -- they load at their site,
15 wrong delivery to places.

16 Q Any of those environmental claims involve
17 the reconstruction of historical coverage?

18 A Some of the -- I -- I believe one or two of
19 them did, Tri-State had been -- had been around,
20 started in 1910, 1920s.

21 Q Can you remember anything more about those
22 one or two that may have involved historical coverage
23 questions?

24 A Could you repeat that?

25 Q Yeah, if I understood correctly -- you --

1 you testified that one or two of those environmental
2 claims that you had handled at Tri-State would have
3 involved historical insurance coverage, and I was
4 asking for more explanation of those two claims to the
5 extent that you can recall?

6 A When we would get -- when we get a -- when
7 we would get a claim in that -- was -- would have been
8 over a period of time we would have to go into our
9 archival records and retrieve any and all policies
10 that applied during that period of time.

11 So that getting -- and the purpose was to
12 get the complete policy, with the terms the conditions
13 and all the endorsements, to evaluate, to know what
14 coverages were available to the insured and when and
15 how much.

16 Q And I may not have asked a good question.
17 I'm trying to get an understanding of the particular
18 claims that involved that historical search that were
19 environmental, what you can recall?

20 MR. WINSTON: Objection, no foundation.

21 A What I can recall, for example, if it was a
22 -- a -- if it was an elevator operator it would be
23 what were the locations, and how long had they been
24 insured with us, and going back into our records to
25 make that determination.

1 Q Do you recall doing that with regard to a
2 particular environmental claim?

3 A I remember doing that a number of times in
4 my career. And generally they would -- I mean,
5 environmental is one of them, asbestos is another.

6 Q I'm asking you, while you were at Tri-State
7 do you remember an instance when you did that on a
8 claim that you would call environmental?

9 A I believe so.

10 Q And can you tell me about that claim that
11 you can remember?

12 A I -- I believe it involved -- a -- a grain
13 elevator.

14 Q Do you recall where that grain elevator
15 would have been?

16 A It would have been in one of the six
17 states.

18 Q Do you recall what -- the -- the loss was
19 or what -- the -- the incident was?

20 A I believe it was leaching into the water,
21 also the ground.

22 Q Do you know what was leaching?

23 A Chemicals.

24 Q Can't remember what chemicals?

25 A No.

1 Q Any other claims, of an environmental
2 nature, that you can recall while at Tri-State where
3 you were called -- or one of the people you were --
4 who were working for you were called on to do
5 historical analysis of the insurance policy?

6 A Please repeat that.

7 Q Yeah, I'm simply trying -- to -- to get an
8 understanding of what you can recall, right now, of
9 those environmental claims, while you were at
10 Tri-State, that involved looking back at historical
11 insurance coverage. And you identified one of them
12 was this grain elevator case?

13 A Mm-hmm.

14 Q And I'm simply asking you if there were any
15 others that you can recall?

16 A As I said, they would have been grain
17 elevators, they would have been petroleum dealers,
18 distributors, that type of thing.

19 Q Right. I understand the nature of them,
20 generally. I'm asking you if you can recall one?

21 A I cannot recall the specifics of one.

22 Q And then in 1991 you went to Bankers and
23 Shippers Insurance Company?

24 A Yes, sir.

25 Q I see that's a Travelers' subsidiary; is

1 that right?

2 A It was at that time.

3 Q What was their line of business?

4 A Non-standard auto and forced place
5 homeowners.

6 Q Am I correct -- to -- to assume that there
7 was no environmental claims involved in your work at
8 Bankers and Shippers?

9 A The only environmental claims that we had
10 would have arisen from an auto accident.

11 Q And then in '94 you went to DaimlerChrysler
12 Insurance Company?

13 A Technically, when I went there it was
14 Chrysler, it wasn't until 1998 that it became
15 DaimlerChrysler.

16 Q And what line of business was the Chrysler
17 and then, later, DaimlerChrysler Insurance Company in?

18 A Their book of business could be divided
19 into thirds, one-third was floor plan insurance for
20 the dealers that financed through Chrysler financial,
21 one-third was what I termed specialty type of
22 insurance, basically for the corporation, such as if
23 Chrysler Corporation could convince the Oscars that
24 all the starlets would arrive in Chrysler vehicles,
25 then we would write a special policy for those

1 vehicles for that time period.

2 We also had a -- did the first layer of
3 coverage for the Chrysler product liability. We did
4 contingent liability coverage for the finance company.
5 And then -- the -- the other third of the business --
6 and this isn't -- is not premium-wise, is not divided
7 equally, 33 --

8 Q Mm-hmm.

9 A -- 33, 33 percent, but the other third was
10 insuring, doing all the property and casualty,
11 providing all the property and casualty insurance that
12 a dealership needed to be in business, and that
13 included the work comp, it -- and it was -- we
14 competed on the open market, so it was not just for
15 Chrysler or Mercedes dealers, it was for any
16 dealership that wanted to insure with us and that we
17 thought was a good risk.

18 Q Now, is floor plan coverage a first-party?

19 A Yeah, floor plan coverage is first-party,
20 it's basically the comp and collision on the vehicles
21 on the dealer's lot.

22 Q Now, while at Chrysler or DaimlerChrysler
23 Insurance Company do you recall any environmental
24 claims?

25 A Because Chry- -- we -- we had some

1 environmental claims, but they were more accidental in
2 nature, and because Chrysler, DaimlerChrysler, did not
3 start writing that book of business until, I believe,
4 '87, '88.

5 Q Is that in the dealer business that you're
6 referring to?

7 A That was in the, yeah, the dealer property
8 and casualty business, they did start writing the
9 floor plan business, I believe, in the late '60s,
10 early '70s.

11 Q And when you refer to accidentals, you --
12 you mean like spill of a tank at a -- at a dealership
13 or something like that?

14 MR. WINSTON: Object to the form.

15 A What I mean is basically a rise in -- yes,
16 rising out of automobile accidents or, you know,
17 someone backing into a gasoline tank, that type of
18 thing.

19 Q And then in 2004 you moved to, is it
20 Malecki, Deimling, and Nielander?

21 A Nielander.

22 Q Nielander, and Associates; is that right?

23 A Really, what I did was I first, in 2004,
24 after I left DaimlerChrysler, I was downsized to early
25 retirement package, I started K.Robi and Associates,

1 and then two to three years later I affiliated with
2 Malecki, Deimling, and Nielander.

3 Q And can you tell me what sort of work
4 you've done in that period of time?

5 A What I do is in consulting work, I do
6 expert witness work, I do train -- training, insurance
7 training, policy language trai- -- ba- -- a lot of
8 it's policy language training, and some of it is
9 claims, claims training.

10 I do technical writing for various
11 companies, and then I also, from time to time, will do
12 perform reviews audits, specialty reviews audits.

13 Q What's a specialty review audit?

14 A It will depend on what the client is
15 looking for, for example, one client came and said,
16 you know, our home offices are always reviewing our
17 claims, our home office is always reviewing our claims
18 office, but we've never reviewed our home office
19 claims department.

20 I had another client who said -- our -- our
21 claims office and our home office are at war over how
22 to handle a certain type of matter. So I did a review
23 on each and then I brought them together for -- a -- a
24 meeting to work out the differences. It's because
25 I've been in the business so long there are a lot of

1 people who know me and if they have a special issue
2 they will, from time to time, contact me.

3 Q What is policy language training?

4 A It's -- it is taking the -- a -- a specific
5 insurance policy and walking the students through the
6 policy and explain the policy to them.

7 Q Are there particular policy types that
8 you've done that for?

9 A Generally we are using the plain,
10 unmodified, ISO insurance service office forms. There
11 are times that a company will hire me to do that type
12 of specific training on their specific files.

13 Q Have you ever done policy training on an
14 ISO policy that's an older ISO form, meaning older
15 than your period of times you've been working at
16 Malecki?

17 MR. WINSTON: Object to the form.

18 BY MR. LASETER:

19 Q I mean, I try to ask you a better question
20 and maybe is a -- I understand that there have been a
21 series of ISO general liability forms, for example,
22 and they have date ranges, what's the oldest, let me
23 ask the preceding question -- although -- thank you,
24 Frank.

25 Have you done -- a -- a policy language

1 training on an ISO liability policy?

2 A Yes.

3 Q What's the oldest ISO liability policy that
4 you've done a training for?

5 A If I go back, historically, it would be the
6 1973 CGL.

7 Q And when was that?

8 A That would have been when I was at
9 Citizens.

10 Q Is that an in-house training?

11 A That's in-house training.

12 Q But while at Malecki what's the oldest one
13 that you've done?

14 A Generally I am working on the most current
15 forms unless the client is using an older form.

16 Q And in your -- the period from 2004 to now
17 have you been involved in environmental claims,
18 excluding the one that you're here about today? Take
19 your time.

20 A Allied Williams Company --

21 Q You're reading --

22 A -- versus American Casualty Company.

23 Q Sorry, you're reading from --

24 A I'm really reading from my CV, page five.

25 Q And that's the second one down on the page?

1 A Yes, sir.

2 Q Any others?

3 A That's it.

4 Q Can you tell me about Allied Williams
5 Company, is -- meaning about this particular -- strike
6 that -- this entry you're reading is identified under
7 expert witness files, what does that mean?

8 A That means that the company that I was
9 hired to be an expert and opine on certain facets
10 involved in that matter.

11 Q Did that engagement result in testimony?

12 A That one did not.

13 Q And if I understand then the -- you've
14 identified on your report all the matters where you've
15 been engaged as an expert, and then the subset of
16 those matters that resulted in testimony at
17 deposition, then the further subset of those that
18 resulted in trial testimony; is that right?

19 A That is correct.

20 Q Okay. With regard to the Allied Williams
21 Company matter, what was that claim?

22 A That was, if I remember correctly, and I'm
23 doing this from memory, I believe that was a pest
24 control entity concerning one of their former
25 properties that had environmental issues. And I

1 cannot -- and I cannot say for sure but I believe the
2 EPA was involved in that.

3 Q Were those environmental issues pesticide
4 related?

5 A They were the chemicals from the pesti- --
6 from the -- from the business, yes.

7 Q Do you know where that facility was
8 located? And if it helps, I notice that this was
9 filed in the Southern District of Alabama.

10 A I'm trying to remember. I don't know why
11 Texas comes to my mind but I can't -- I can't say for
12 sure.

13 Q You said that you thought that EPA may have
14 been involved, did I hear that right?

15 A That's what I said.

16 Q Do you recall if there was a state agency
17 involved?

18 A I cannot recall.

19 Q Do you recall whether or not there was a
20 PRP letter issued in that case?

21 A I cannot recall.

22 Q I should have asked you a precedent
23 question. Do you understand what I mean by PRP
24 letter?

25 A I believe it means potential responsible

1 party.

2 Q Yeah, yeah, the phrase PRP means potential
3 responsible party. Have you ever heard of a general
4 notice letter from EPA?

5 A General notice letter? I'm --

6 Q Are you familiar with the term of art, a
7 PRP letter?

8 A Please repeat that.

9 Q All right. Are you familiar with the term
10 of art, in environmental claims, referred to as a PRP
11 letter?

12 A Yes.

13 Q Okay. What does that mean to you?

14 A That means to me that the EPA has notified
15 an entity that they are looking into an environmental
16 matter of which they believe the entity might be a
17 responsible party.

18 Q Are you familiar with the term of art, a
19 104E letter?

20 MR. WINSTON: Object to the form.

21 THE WITNESS: 10- --

22 MR. WINSTON: Actually, I object on
23 vagueness grounds. Go ahead, you can answer.

24 A 104E letter?

25 Q Mm-hmm?

1 A Not C, E?

2 Q E, correct.

3 A I believe that's an information request
4 letter.

5 Q And do you understand how, if at all, that
6 relates to a PRP letter?

7 A Generally, it is my understanding that
8 generally the request for information comes prior to
9 the PRP.

10 Q And sitting here today can you recall
11 whether or not the Allied Williams Company involved a
12 request for information letter?

13 A I cannot remember.

14 Q And sitting here today can you remember
15 whether the Allied Williams Company involved a PRP
16 letter?

17 A I cannot remember.

18 Q Sitting here today can you recall any other
19 matter, besides the one we're here testifying about
20 today, that you worked on that involved a 104E
21 information request letter?

22 A During my -- after 2004?

23 Q We'll start there, yes. After that point,
24 yes?

25 A No.

1 Q All right. And after 2004 can you recall
2 any matter that you've worked on, other than the one
3 we're here about today, that involved a PRP letter?

4 A I thought I just answered that one.

5 Q I was asking you first about a 104E
6 information request and then I was going to ask you
7 about a PRP letter. You can put them both together if
8 the answer is the same?

9 A I've lost my train of thought.

10 Q Let's start all over again.

11 MR. WINSTON: I don't even think there's a
12 question pending, anyway. Go ahead.

13 BY MR. LASETER:

14 Q The first question is, after 2004, and
15 working for the current firm that you're working for,
16 or at K.Robi Associates, do you recall working on any
17 matters where the EPA had issued a 104E information
18 request letter?

19 A No.

20 Q And sitting here today, in the period after
21 2004, working at your current employer or at K.Robi,
22 do you recall any matters where EPA issued a PRP
23 letter?

24 A No.

25 Q Prior to 2004, can you recall a matter that

1 you were involved in that involved a 104E information
2 letter, information request letter?

3 A I'm sure we had some of those at Citizens
4 and I'm sure we had some of those at Tri-State.

5 Q Can you remember any of them, sitting here
6 today?

7 A Can I remember, specifically? I cannot
8 recall that, specifically.

9 Q And the same question with regard to PRP
10 letters. Sitting here today can you recall any
11 particular instances, prior to 2004, where you were
12 responsible for a matter that involved a PRP letter?

13 A I know there were PRP letters involved. I
14 cannot recall the specific claim.

15 MR. WINSTON: We've been going over an
16 hour, so whenever it's a good time to break, if we can
17 take one?

18 MR. LASETER: This is actually a good time.

19 MR. WINSTON: Okay. Five minutes?

20 MR. LASETER: Yeah.

21 (Recess.)

22 MR. LASETER: Let's go back on the record.

23 BY MR. LASETER:

24 Q Ms. Robison, I think this is inherent in
25 your prior testimony, but I want to go ahead and ask

1 it just to be sure.

2 Am I correct to assume that you, other than
3 the case that we're here to talk about today, you've
4 never been involved in a situation where an insurance
5 company had to consider whether or not a PRP letter
6 would be considered a suit under a general liability
7 policy for purposes of the defense?

8 A I can't say that in my history some- --
9 someplace in time that didn't occur, but I can't say
10 for sure.

11 Q And -- and sitting here today you don't
12 recall any such instance?

13 A I -- I -- and sitting here today I don't
14 recall such instances.

15 Q And -- and for purposes of your opinions in
16 this case you're not relying on your personal
17 experience in doing that at some point in your career?

18 A That would be correct, I'm not relying on
19 person- -- personal experiences.

20 Q And again, I think this is inherent in your
21 -- in your answer before, but I'll ask the same
22 question with regard to 104E letters, have you ever,
23 in your career, been involved in a situation where an
24 insurance company had to consider whether or not a
25 104E letter constituted a suit, for purposes of a CGL,

1 a duty to defend under a CGL policy?

2 A I'm hesitating here because I'm going back
3 to my experiences at Citizens, because of the
4 timeframe that I was at Citizens, particularly in home
5 office, when historically this was -- these type of
6 claims are really bubbling up, so to speak, I -- I
7 know that we were confronted with these various
8 issues, okay? I cannot specifically recall -- the --
9 the claims nor the specifics of them.

10 Q All right. So sitting here today, you
11 don't recall any instance where you were involved in
12 the decision that an insurance company, with regard to
13 whether or not a 104E information request would be
14 considered a suit for purposes of triggering the duty
15 to defend in a liability policy; is that right?

16 A I cannot recall a specific case.

17 Q Do you know for certain that you were ever
18 involved in such a case?

19 A I believe I was but I can't say with
20 concrete certainty.

21 Q Do you recall the decision that Citizens
22 would have reached, with regard to any such case, in
23 terms of whether they would have defended that claim?

24 A I can recall the process that we went
25 through.

1 Q What was that process?

2 A The process was to gather all the -- all
3 the policy data, the conditions, the terms, the
4 exclusions, all the endorsements, the process then
5 would have been to have evaluated against that, and
6 then the process would have been to determine what the
7 current -- what the case law, what -- the -- the legal
8 requirements were in that venue. And in those cases
9 we generally consulted with an attorney, legal
10 counsel.

11 Q In those cases, what -- what do you -- what
12 do you mean by "in those cases"; what do you mean by
13 "those cases"?

14 A When I say in those cases I would say where
15 we are going to make a determination. I believe your
16 question was what I mean by in those cases was when we
17 were making a determination if the 104E or the PRP
18 letter constituted duties on our part.

19 Q Do you recall the decision reached by any
20 of the insurance companies you've worked for with
21 regard to -- any -- any matter where a 104E letter was
22 at issue?

23 MR. WINSTON: Objection. I think that's
24 been asked and answered.

25 A I -- I, again, I would refer to the process

1 that we went through, and I would say we would do a
2 follow-through process, and depending upon that venue,
3 at that time, we would have responded accordingly.

4 Q Okay, sure, and fair enough. But I'm
5 asking you if you recall any specific instances, right
6 now?

7 A The specific instances with the claim
8 number and the name and the date do not come to mind.

9 Q How about the general description of the
10 matter?

11 A The general descriptions of the matter, as
12 I said, would have been from a -- from a -- an
13 entity's production having chemicals, et cetera,
14 created an environmental concern, either on the land
15 or on the water or from leaching of waste disposal
16 places, that would be the best I could do.

17 Q But you can't remember a specific instance,
18 sitting here today?

19 A I can't remember -- I can't recall a
20 specific instance.

21 Q I want to follow up on the procedure you
22 just described for how a -- such a claim would have
23 been evaluated, and I want to step away from
24 particularly asking about environmental claims, just
25 ask about claim, complex claims, in general, when

1 confronted with situations where there may be legal
2 issues with regard to whether or not coverage -- was
3 -- was afforded under a given policy.

4 Can you recall -- any -- any such issues
5 where the legal question involved had differing
6 outcomes and differing jurisdictions?

7 MR. WINSTON: Objection, vague.

8 A Yes.

9 Q Can you give me an example?

10 A Again, I'll go to my most recent example,
11 which would be at DaimlerChrysler.

12 Q Mm-hmm.

13 A Okay, when we're talking about sometimes
14 prior dam- -- prior damage, disclosure of prior damage
15 by a dealer, that will vary from venue to venue. Do
16 we have coverage, don't we, how much do we have, et
17 cetera, that's one of the -- that's -- that's one
18 issue.

19 Sometimes one is confronted with that, with
20 underinsured and uninsured motorist types of claims,
21 because that's -- it's so state specific and venue
22 specific.

23 We have an, under the CGL policy currently,
24 we have the issue of faulty workmanship, that
25 depending upon the venue depends on how it's

1 addressed.

2 Q Can you explain that faulty workmanship
3 issue?

4 A The faulty workmanship issue -- is -- is
5 the -- is faulty workmanship in and of itself an
6 occurrence.

7 Q And some jurisdictions say it is and some
8 say it's not?

9 A Correct.

10 Q Do you know whether there is a majority
11 rule one way or the other?

12 MR. WINSTON: Objection, vague, calls for a
13 legal conclusion.

14 A I have not looked at it as to tallying up
15 how many states go one way or the other because we
16 have states that will go one way and then they'll go
17 the other.

18 Q Are there any states in which there is no
19 decision on that, at this time, to your knowledge?

20 A I believe there are some.

21 Q And if you were presented with a claim
22 involving one of those states, where there is no
23 current rule on it, how would you proceed as a claims
24 handler?

25 A In the state that there is no rule on it,

1 how would I proceed as a claims handler? I would
2 consult -- I would consult with my supervisor.

3 Q Mm-hmm.

4 A I would consult with various resources, and
5 I may even consult with a -- with legal counsel. And
6 then, through their collaborative process, would act
7 accordingly.

8 Q What resources do you have in mind?

9 A It -- it could be various resources. I --
10 you know, this is a hypothetical. I couldn't really
11 --

12 Q Sure.

13 A I can't say this book or this book or that,
14 there would be various resources.

15 Q By -- by -- by resources you mean -- you
16 mean books?

17 A They -- it could be books, it could be, you
18 know, information. I mean, and today, and in today's
19 world we have a lot of things -- on the -- on the
20 system, the computer, the inter- -- you know, there's
21 a lot of things that one can access that are not
22 actually in books.

23 Q I may have misheard you. I -- I think you
24 said that you might possibly consult legal counsel, is
25 that right or would you always consult legal counsel

1 if you were dealing with a situation where, for -- to
2 stick with our example, the faulty workmanship
3 question had not been addressed in the jurisdiction at
4 issue?

5 MR. WINSTON: Object to the form. Go ahead
6 and answer if you understand.

7 A I -- I don't think that I could say I would
8 always or would always not.

9 Q Mm-hmm.

10 A It would depend on the circumstances and
11 how recently that issue has been looked into prior, et
12 cetera. So --

13 Q Meaning how recently that issue had been
14 looked in with regard to whether coverage provided in
15 a given jurisdiction?

16 A Correct.

17 Q If it had never been looked at by the
18 company, in the jurisdiction at hand, would you --
19 would you, as a claims handler or a claims supervisor,
20 at least recommend consulting counsel?

21 A That might be.

22 Q And why might you not?

23 A Again, it's -- it's claim specific, it also
24 could be depending upon the wording in the policy or
25 the endorsements that have been added to it.

1 Q While you were at DaimlerChrysler Insurance
2 Company did the claims adjusters working for you have
3 a system for recording of daily activity?

4 A We had a system for recording. I don't
5 know if you would call it daily activity.

6 Q Can you explain your system for recording
7 that you had there?

8 A We had a -- we had a computerized claims
9 system where there was a section for an adjuster to
10 put in notes concerning the factual activities that
11 took place that were not otherwise documented within
12 the claim file.

13 Q Mm-hmm. Was there a similar system in use
14 at Bankers and Shippers?

15 A Halfway through we went to computer,
16 computerized, the first half it was mo- -- it was more
17 a hardcopy in the file.

18 Q What would -- what would go into a hardcopy
19 put in the file? Do you mean, like, notes?

20 A It would be the adjuster's notes recording
21 the facts of information that was not otherwise
22 recorded in the claim file.

23 Q Have you ever worked at an insurance
24 company where adjusters or claims handlers didn't use
25 either a computerized system or a system of notes to

1 record their activity?

2 A Yes, I have. And on the more -- and what
3 we're saying is I don't -- the more complex claims I
4 have seen filed where it's a complex legal matter, say
5 in litigation, and the documentation within the file
6 is sufficient, that the adjuster is not putting in
7 notes.

8 Q I may not have asked -- a -- a good
9 question. I meant to ask, while you were working at
10 an insurance company was -- was there ever an
11 insurance company that you worked for that didn't have
12 a system for either computerized or handwritten
13 recording of activity?

14 A I'm -- I'm not --

15 MR. WINSTON: Object to the form.

16 A I'm going back in my memory, because I --
17 I'm not quite sure what we did at State Auto in the
18 early '70s or at INA in the early '70s.

19 Q Yeah?

20 A I can't recall how we did it.

21 Q And -- and how about at Dairyland?

22 A Dairyland we did have -- we did -- we did
23 put notes in the files.

24 Q How about at Sentry?

25 A Yes.

1 Q Yes, you put notes in the file?

2 A Yes.

3 Q And excluding the current case, have you
4 ever worked for any insurance company where, as a
5 matter of routine practice, they did not have some
6 system of either putting notes in the file or using a
7 computer system for that same purpose?

8 A I have worked at companies that have those
9 systems. Again, there is no requirement that the --
10 there has -- the frequency of the notes or the length
11 of the notes or how many of the notes. So I have had
12 case -- claims where, because of the correspondence
13 going back and forth there are, to all extents,
14 extensive purposes, there are no notes.

15 Q Sure. And I don't mean to say that every
16 -- every single claim has notes, but rather I merely
17 mean to ask you whether you've ever worked with an
18 insurance company where there wasn't a system
19 generally in place for the recording of activity by
20 claims handlers, either computer or in handwritten
21 notes?

22 A With the companies that I've worked for
23 that I can -- and again, I -- I'm sorry I can't go
24 back to what I did at State Auto and INA, because
25 those were so long ago, they -- they each had a

1 system.

2 Q And after 2004 and your consulting work,
3 excluding the current matter, have you consulted with
4 any company that you know had no such system for
5 recording claims activities, claims adjusters
6 activities?

7 A Some of the companies that I've consulted
8 with have been -- haven't been in their claims area,
9 so I can't -- I can't answer that across the board.

10 Q But where the ones where you've had
11 exposure to their claims function are you aware of
12 anywhere they didn't have a system for recording
13 adjuster's activities?

14 A The ones where I've been exposed to their
15 claims function they had a system for recording
16 activities.

17 Q You described a moment ago a process that
18 you would have gone through in the event you were
19 considering a -- whether or not a 104E letter
20 triggered an obligation in your policy; is that a
21 standardized process throughout the insurance
22 industry?

23 MR. WINSTON: Let me object to the extent
24 that calls for a legal conclusion. Go ahead and
25 answer the question.

1 BY MR. LASETER:

2 Q And yeah, let me -- let me -- before you
3 answer, let me be sure I framed the question right. I
4 merely mean to ask you as a -- as an experienced
5 claims executive and an expert -- on -- on claims
6 matters, not as a lawyer.

7 I'm just asking you, in your experience as
8 a claims expert, whether you understand the process of
9 handling claims to be standardized?

10 A I can say that that process that a -- I --
11 I explained to you was -- is a common process. I
12 can't say that it's a standardized process in each and
13 every claims organization.

14 Q What does the designation CPCU stand for?

15 A It is chartered property casualty
16 underwriter.

17 Q And AIC?

18 A Associate in claims.

19 Q And are they both given by the same
20 organization?

21 A Yes, they are.

22 Q And what's that organization?

23 A Today it's known as the Institutes.

24 Q And what did it used to be known as?

25 A AII, American Insurance Institute, maybe.

1 I'm not quite sure.

2 Q Okay. The AIC is a designation given by
3 the Institute; is that right?

4 A That's correct.

5 Q And it focuses on claims?

6 A It focuses on claims.

7 Q Does the CPCU designation also have a
8 claims component?

9 A The CPCU is a -- more of a general
10 insurance series of courses. CPCU does not -- not --
11 does not say how claims are handled or does not go --
12 let me try -- it's the -- the one -- the one I took
13 was a ten-part series.

14 Q The -- that -- the CPCU is a ten-part
15 series?

16 A Was a ten-part series.

17 Q Mm-hmm.

18 A And it was -- it went through -- the -- the
19 overall insurance organization, explaining it,
20 departments, I'm not quite sure it goes into claims,
21 specific claims handling practices.

22 Q You described the one that you got as
23 having ten components, has that evolved over time, the
24 number of components required?

25 A Originally, in 1941 or '42 it started out

1 with five parts, and then in the mid to late '70s it
2 -- they split each part and made it ten parts, and in
3 the last ten years it has evolved to eight parts with
4 the ability to go either on with a personalized
5 emphasis or a commercialized emphasis.

6 Q And how many -- strike that -- does the AIC
7 designation come as a result of completing a number of
8 courses?

9 A Yes, it does.

10 Q How many courses are involved?

11 A At the time that I did that it was four
12 courses.

13 Q What were the topics for those four
14 courses?

15 A One was property casualty and work comp, it
16 was a general property casualty and work comp.

17 Q With the focus on claims?

18 A With the focus on claims.

19 Q Others? I'm sorry, was that one of them or
20 was that -- was that the -- I think you said that
21 there were four courses?

22 A There were four courses, one was general.

23 Q Okay?

24 A One was liability, one was property, and
25 one was work comp.

1 Q I -- thank you. Do you teach CPUC (sic)
2 courses now?

3 A No, I do not teach CPCU courses.

4 Q Do you teach IAC (sic) courses?

5 A No, I don't teach AIC courses.

6 Q Do you teach any courses in claims
7 handling?

8 A I do, for various clients, give some
9 courses that relate to claims handling that are also
10 continuing education.

11 Q In what states?

12 A Depends. North -- North Carolina, Texas,
13 Oklahoma, Florida, Wyoming, sometimes for
14 Independence, Mississippi, Delaware are the ones.

15 Q Are those courses common in all those
16 jurisdictions?

17 A Those courses have been approved for
18 continuing education credits in those jurisdictions.

19 Q Is it the same course that's been approved
20 in each of those jurisdictions?

21 A Yes, sir.

22 Q Did those courses involve general
23 materials, text materials, or are they insurance
24 company specific?

25 A They're general text materials.

1 Q Who publishes those materials?

2 A The vast majority -- I -- I do -- I do for
3 a firm called Claims Training Services out of, I
4 believe, Jackson, New Jersey, Jacksonville, New
5 Jersey, maybe.

6 Q Have you used their materials?

7 A I -- Claims Training Services is owned by
8 Bil Stewart, who I've known for a long time, and so
9 when he has more work than he can handle he hires me
10 to do that.

11 Q I'm just trying to understand where -- the
12 -- the text for those courses comes from?

13 A They're his texts. They are not published.
14 They -- they are not on the market for sale.

15 Q Do I understand right that those texts have
16 been approved by the insurance commissioners or
17 whoever approves continuing education in those states?

18 A The insurance departments, yes.

19 Q Are there texts that the AIC courses use
20 for claims handling?

21 A Yes, there are texts.

22 Q Do you still have those texts?

23 A I don't know if I do or not. I always
24 wanted to keep my CPCU textbooks but over the many
25 moons they've sort of disappeared.

1 Q Are there textbooks that you consider
2 especially important or reliable in the area of claims
3 handling?

4 A Currently, today, I have not been
5 acquainted with any.

6 Q If you -- if you go back in your prior
7 experience?

8 A If I go back in my prior experience there's
9 a really old one, that was put out by John something,
10 but it's very outdated today.

11 Q Are you familiar with an American Institute
12 of CPUC (sic) publication called Property Loss
13 Adjusting?

14 A No, I'm not.

15 Q On page one of your report, Exhibit 1, in
16 the paragraph immediately under qualifications, the
17 third line down, the phrase "best practices"; do you
18 see that?

19 A Yes.

20 Q What does best practices mean in that
21 paragraph?

22 A Best practices has come to mean the
23 practices, the processes, procedures that are
24 effective and efficient and meet the goals of the
25 company and fulfill -- the -- the duties of the claims

1 person and the underwriter.

2 Q Are those best practices company specific?

3 A A lot of times they are -- are -- when one
4 talks about best practices they're more generic, but
5 then they need to be applied, modified, adapted to the
6 individual company, for that individual company's
7 uniqueness.

8 Q And if a person wanted to go and learn
9 about what are the generic best practices in claims
10 handling where would they go?

11 A If I was going to look for what -- the --
12 the best practices were, are generically, I would be
13 looking to maybe some of the publications that the
14 Institute puts out.

15 You have -- you have various large
16 consulting firms that will -- they don't publish them
17 but -- you can -- you can contract with them and they
18 will give those to you, such as IBM has an insurance
19 consulting arm, McKenzie and Company, those places.

20 Q Does Mercer have any?

21 A Does?

22 Q Mercer, any affiliates of Marsh?

23 A I'm not familiar with that, but could be.

24 Q Any other sources for the generic best
25 practices that come to mind?

1 A Oh, from time to time Claims Magazine,
2 Insurance, Or Claims Advisor, they could publish
3 something that someone wrote.

4 Q We were talking earlier about the process
5 for evaluating a claim, and I believe you had -- you
6 identified gathering the policies -- is -- is one
7 step, evaluating the policies against the facts is
8 another step, and ascertaining the law in any
9 unanswered questions is another step. Are there
10 additional steps that are -- that are standard
11 processes you go through in evaluating a claim?

12 A It could depend on the claim but I think
13 those are the basic ones.

14 Q Is -- is that the order that you would
15 ordinarily proceed in evaluating a claim?

16 A That would be the order.

17 Q Is that mandatory?

18 MR. WINSTON: Objection to the extent
19 you're calling for a legal conclusion.

20 BY MR. LASETER:

21 Q And -- and let me ask a better question,
22 that's a fair objection.

23 I don't mean to ask whether that's required
24 by any law. I'm asking whether it would be in
25 accordance with best practices to always do it in that

1 order, meaning the order of find the policies,
2 evaluate the policy against the facts, followed by a
3 legal evaluation of any unanswered questions?

4 A I believe that would be advisable.

5 MR. LASETER: We're a little bit ahead of
6 schedule for a break, but we're close to a break, and
7 this is a good stopping point for me so why don't we
8 take a break?

9 MR. WINSTON: Okay.

10 THE WITNESS: Okay.

11 (Recess.)

12 BY MR. LASETER:

13 Q If I can get you to turn to page three of
14 your report, okay, that's Exhibit -- deposition
15 Exhibit 1, and down in the last full paragraph on the
16 page it starts with, "To perform a coverage analysis
17 one must review all the complete policies"; do you see
18 that?

19 A Yes.

20 Q What does the term "complete policies" mean
21 to you?

22 A Complete policies means to me having the
23 declaration page, the insuring agreement, the
24 conditions, the exclusions, all the endorsements and
25 the definitions.

1 Q Is it possible to proceed with an analysis
2 of coverage without all those things?

3 A It would be very difficult because all
4 those things are necessary to understand the complete
5 policy.

6 Q Have you ever been involved in a situation
7 where you've made a coverage analysis with less than a
8 complete policy?

9 A Not that I recall.

10 Q Are you familiar with the -- with whether
11 or not an insurance company or the insured have the
12 obligation of establishing exclusions to the policy?

13 A Please repeat that question.

14 Q Do -- do you know whether or not, as a
15 matter either of -- strike that -- do you know, as a
16 matter of custom in the insurance industry, whether a
17 policy holder is required to establish its exclusions
18 in an insurance policy when seeking coverage -- under
19 a -- for a claim?

20 MR. WINSTON: And I'll object, calls for a
21 legal conclusion.

22 A You're saying the policy holder, not the
23 insurer?

24 Q Best -- that's my question, yes.

25 MR. WINSTON: I'm going to object, now,

1 that the question is somewhat vague, as well as calls
2 for a legal conclusion.

3 THE WITNESS: Can you repeat that question
4 back?

5 MR. LASETER: Sure.

6 THE WITNESS: To make sure I answer --

7 MR. LASETER: Yeah, let me ask a -- maybe a
8 better question, that'll be -- be easier.

9 BY MR. LASETER:

10 Q Do you understand that the insurance
11 company has the burden of establishing exclusions to
12 policies, as a general matter?

13 MR. WINSTON: Let me object, calls for a
14 legal conclusion.

15 A I understand that the insurance company
16 will present a policy to an insured that normally does
17 contain exclusions, and that the insured can -- and
18 there are times, depending upon the type of insured
19 and the availability, that there are endorsements the
20 insured can elect that will modify or eliminate
21 exclusions.

22 Q I may have asked a -- I'm sure I asked a
23 bad question.

24 With regard to a -- the determination of a
25 specific claim, and whether or not there's coverage

1 for a particular claim, do you understand whether or
2 not the insurance company has the obligation of
3 establishing the existence of any exclusions it wants
4 to use to bar coverage?

5 MR. WINSTON: Same objection, calls for a
6 legal conclusion.

7 A The -- the insurance company -- and -- and
8 the insured presenting a claim, the insurer will
9 advise the insured of the applicable exclusions.

10 Q But as between the insurance company and
11 the policy holder do you have any understanding, one
12 way or the other, as to who has the burden of
13 establishing exclusions?

14 MR. WINSTON: Objection, calls for a legal
15 conclusion.

16 A By establishing -- con- -- exclusions are
17 you saying writing the -- creating the exclusions?

18 Q No. I mean to say proving that they
19 existed on a given policy?

20 MR. WINSTON: Yeah, objection, calls for a
21 legal conclusion.

22 A Generally, when a claim comes in, if there
23 are any applicable exclusions then it is the insurance
24 company who advises the insured of those -- and -- and
25 establishes that, and shows that the exclusion's

1 applicable to the situation.

2 Q In a coverage dispute, meaning a
3 disagreement as between the insured and the policy
4 holder, do you have an understanding whether the
5 insurance company's obligated to demonstrate the
6 existence of those exclusions if it wants to rely on
7 them?

8 MR. WINSTON: Same objection, calls for a
9 legal conclusion.

10 A It is my understanding that when the
11 insurance company is relying on certain exclusions --
12 that would -- that would bar coverage that the
13 insurance company advises of those exclusions.

14 Q And if it's unclear whether or not they
15 exist with a given policy, because the policy document
16 may not be complete, who has the obligation of
17 establishing that, to the extent you know?

18 MR. WINSTON: Objection, calls for a legal
19 conclusion.

20 A The l- -- the legal conclusion in -- in the
21 jurisdiction I do not know.

22 Q Is it your view that you can't do an
23 evaluation of coverage without a complete policy?

24 A Well, one never says never, and with the
25 word can, obviously one can do an evaluation. Should

1 one do an evaluation and is the evaluation proper are
2 different issues.

3 Q Can an evaluation of a claim ever be
4 proper, in your judgment, if the policy before the
5 claims handler's not complete?

6 A Depends --

7 MR. WINSTON: Objection, vague, go ahead
8 and answer.

9 A Depending upon the given claims situation I
10 would say in most instances it would not be proper to
11 make that evaluation without a complete policy.

12 Q If a claims handler has less than a
13 complete policy with regard to a particular claim is
14 it proper for that claims handler to do nothing
15 further until the complete policy's located?

16 MR. WINSTON: Objection, vague.

17 A I -- it is my opinion that -- the -- the
18 claims handler should continue their activities and
19 accumulated in trying to locate the complete policy.

20 Q And if they reach a conclusion that they
21 can't find a complete policy what should they do?

22 A The claims adjuster should then go in
23 consultation with their supervisor and the company
24 proc- -- procedures in that.

25 Q And do those procedures vary from company

1 to company?

2 A Those procedures could vary from company to
3 company depending upon the company's historical
4 perspective, how long the company's been in business,
5 the types of policies they have, et cetera.

6 Q Are you aware of any procedure that the
7 Travelers has with regard to how a claims handler
8 should proceed in the event the policy appears to be
9 incomplete?

10 A From my understanding of the documents
11 reviewed, and the depositions reviewed, that when a
12 claims handler has an issue they go into consultation
13 with their supervisor on that issue and then act
14 accordingly.

15 Q Act according to what their supervisor
16 tells them?

17 A The supervisor could then go into
18 consultation with their supervisor, go into
19 consultation with other people in the department, and
20 even with counsel.

21 Q What's your source for Travelers'
22 procedures that you guys described?

23 A Those procedures that I just described were
24 in Robert Harris' deposition.

25 Q Have you seen any other source for

1 Travelers' procedures besides Mr. Harris' deposition?

2 A I did not see any other written -- I did
3 not see a document on Travelers' written procedures.

4 Q Do you have any other source, besides
5 Mr. Harris' deposition, written or otherwise, for
6 Travelers' procedures?

7 A Basically -- in the -- in the documents I
8 reviewed I would be mainly Mr. Harris'.

9 Q I want to be clear, though, is there
10 anything besides Mr. Harris' deposition that you're
11 relying on for Travelers' procedures?

12 A I'm -- there may have been something in
13 Gail Dalton's deposition.

14 Q Can you recall what it was?

15 A I can't recall, at this point, that's why I
16 was hesitating.

17 Q Besides Mr. Harris' deposition testimony
18 and Ms. Dalton's deposition testimony is there
19 anything else that you're relying upon for Travelers'
20 procedures in this case?

21 A Those would be the two.

22 Q And as a former claims executive and an
23 expert in claims, assuming that a company is
24 confronted with a situation where policy's incomplete,
25 and the matter percolates up, as you describe, from

1 the initial adjuster to supervisor after supervisor
2 after supervisor, how should the company evaluate
3 that?

4 MR. WINSTON: Objection, vague.

5 A How should the company evaluate that? It
6 would be looking at what documents they do have,
7 decide -- making the decision that, okay, we are going
8 to move forward with -- what -- what we do have, or
9 have we exhausted all avenues, and having exhausted
10 all avenues then making a decision, do we have enough
11 information here to move forward to make a decision.

12 Q And in your judgment that'll be made -- at
13 a -- at a supervisor level?

14 A That would be made at a -- it would be
15 made -- generally, it's not made by a -- an individual
16 person, it would be made in consultation with others.

17 (Robison Exhibit No. 3 was marked for
18 identification.)

19 BY MR. LASETER:

20 Q Let me show you a document that's marked as
21 Exhibit 3, if you'd take a moment and look that over
22 and let me know when you've had a chance. And I'll go
23 ahead and tell you that my first question is going to
24 be is -- on -- on page eight of your report, you
25 reference --

1 A Okay.

2 Q -- a document, and my first question is
3 going to be, is this the same policy?

4 MR. WINSTON: Hold on.

5 BY MR. LASETER:

6 Q But I'm just giving you that as a guide.
7 My first question is simply let me know when you're
8 done reviewing Exhibit 1. Did you have a chance to
9 look at Exhibit 3?

10 A Excuse me?

11 Q Have you had a chance to look over Exhibit
12 3?

13 A Yes.

14 Q Okay. If you can turn to page eight of
15 your report, in the first paragraph that is not a
16 quote, it has a citation and Bates numbered and those
17 citations are T00296 to 000304?

18 MR. WINSTON: Let me object because I think
19 you left out, just for clarity, I think you left out a
20 zero in the 296 designation.

21 MR. LASETER: Thank you. Let me strike
22 that question -- and -- and go back and say that, for
23 identification purposes, Exhibit 3 bears a Bates label
24 T000296 through T000335, and I believe it is
25 consecutive.

1 BY MR. LASETER:

2 Q And then turning to my question, you
3 identify pages T000296 to 000304 on page eight; did I
4 read that right?

5 A Yes.

6 Q And that appears to be a part of Exhibit 3,
7 does it not?

8 A Yes.

9 Q Do you know what I mean by a PDF file?

10 A Yes.

11 Q Yeah? I believe that Exhibit 3 is a
12 complete single PDF file running through to page T35;
13 is that your understanding? Or do you have an
14 understanding one way or the other?

15 A I don't have -- I --

16 Q You don't know one way or the other?

17 A I don't know one way or the other if you're
18 correct or not.

19 Q Per- -- perfectly fair. And then -- my --
20 my question is, why, if you can -- if you know, did
21 you cut off -- the -- the numbering for your reference
22 at number -- last number 304?

23 A I -- I took -- I took -- the -- the base
24 policy form, the endorsements that followed I was not
25 sure, because there were no effective dates listed on

1 -- the -- the endorsements, and then we got into the
2 endorsements such as on T000309, we got -- there was
3 one effective date but then you get to T00310 and your
4 effective date is 9/71. I was doing that just for
5 clarity.

6 Q Is T000296 to 304 a sufficiently complete
7 policy, in your judgment, to make a coverage
8 evaluation in this case?

9 A There -- the endorsements there are -- it
10 -- there are certain things still missing, here, such
11 as knowing what all the endorsements were on this
12 policy. Another issue here was the not having a
13 listing somewhere on this with all the endorsements
14 that were attached.

15 Q Do you have an understanding, one way or
16 the other, as to whether that listing ever existed?

17 A I don't have any -- I can't -- I can't tell
18 you if it ever existed or it didn't exist. I can tell
19 you that in the normal course of business for an
20 insurance company there would have been a listing.

21 Q If the document that you quote is the only
22 document available in this situation is that
23 sufficient to make a coverage determination?

24 A Again, it depends on what we're making a
25 coverage determination on.

1 Q How about the duty to defend?

2 A On the duty to defend, here we are looking
3 at the base policy, and again, this was -- and this --
4 and in this case that we're talking about it spanned
5 -- a -- a number of years. I believe it went back
6 into the '40s, the policies into the '40s, and this
7 policy, if in looking at the effective dates, this is
8 the '67 policy.

9 So if we are talking about issues between
10 '67 and '70 this might be sufficient depending upon
11 the issues.

12 Q And do you have an understanding -- of the
13 -- of the -- the facts in this case sufficient to
14 render an opinion as to whether or not it's sufficient
15 with regard to the duty to defend?

16 MR. WINSTON: Objection. Object to the
17 form, vagueness.

18 A In this case it is my understanding that
19 Travelers based their -- their decision on duty to
20 defend a lot -- not a lot -- but used this policy
21 series for that.

22 Q This policy series or this policy form?

23 A By this policy what I meant by this series
24 of policies, from '67 to '70, and then the renewal
25 from '70 to '73.

1 Q And in your judgment was that appropriate
2 for them to do?

3 A They had, after 15 months, this is -- this
4 is what they came up with, this is what they were able
5 to locate, and I believed it was appropriate because
6 they moved on what they had, the best at that point in
7 time.

8 Q Did you see any evidence of a determination
9 being made by Travelers that they were going to
10 proceed with the evaluation even though they had less
11 than a complete policy?

12 MR. WINSTON: Object to the form. Object
13 to vagueness.

14 A Are you asking me in any of the documents I
15 reviewed I actually saw a statement from Travelers to
16 that effect?

17 Q Correct.

18 A No, I did not.

19 Q Did you see any testimony to that effect?

20 MR. WINSTON: Objection. Object to the
21 form. Objection, vagueness.

22 MR. LASETER: Let me be sure we're talking
23 about the same thing because that's maybe a fair
24 objection.

25 BY MR. LASETER:

1 Q You had testified earlier, I believe, that
2 the determination of whether or not a policy was
3 sufficiently complete to allow a company to make
4 coverage determination would be made by supervisors in
5 a process of collaboration --

6 A Mm-hmm.

7 Q -- is that right?

8 A That's correct.

9 Q And I'm asking you with regard to this
10 particular claim if you ever saw any evidence that
11 that process of collaboration was made prior to the
12 time they decided to proceed with the evaluation based
13 on the policy that you reference in your report?

14 MR. WINSTON: Same objections.

15 A If I can understand your question, you're
16 asking me if, prior to making the coverage decision
17 that they -- they -- you're not talking about the
18 coverage decision, itself.

19 Q I'm talking about the duty to defend
20 decision?

21 A The duty to defend decision?

22 Q Mm-hmm.

23 A Yes, in Gail Dalton's deposition she said
24 that she had consulted -- with -- with counsel.

25 Q And do you think she said she consulted

1 with counsel with regard to whether or not the policy
2 was sufficient or complete?

3 A No. Okay --

4 MR. WINSTON: Let me object to the
5 vagueness.

6 A I think that's where I was confused --

7 Q Okay.

8 A -- with your question.

9 Q Yeah, let me ask it again, just to -- be --
10 be sure. And we can wait for the ambulance coming to
11 cart me away.

12 I'm simply focused on the question of
13 whether or not the policy information that the
14 Ms. Dalton and the claims department at Travelers had
15 before them when they made the duty to defend in this
16 case, and I'm asking you whether you saw any evidence
17 that the claims department at Travelers made this sort
18 of collaborative decision that you've described with
19 regard to whether or not this policy information was
20 sufficient and complete to allow them to make a
21 decision about the duty to defend?

22 A I did not see any documentation
23 specifically addressing that issue.

24 Q And did you see any testimony specifically
25 addressing that issue?

1 MR. WINSTON: Objection, asked and
2 answered.

3 A I did not see any testimony, either.

4 Q On page three of your report you refer to
5 the policies at issue in this case as being
6 manuscript, and I'm looking now at the bottom
7 paragraph, partial paragraph on page three; what does
8 that mean to you?

9 A Manuscript, to me, means that -- the -- the
10 entire policy is not completely a form policy. In
11 other words, where the forms are pre- -- all the forms
12 that are attached to the policy are pre-printed.

13 Q And did you see any evidence in your review
14 that the fact that these policies may have been
15 manuscript have affected how the claims department
16 handled this claim?

17 A Please repeat that question?

18 Q Yeah, I'm going to ask -- you say on --
19 well, strike that -- I'm simply asking you whether you
20 saw any evidence, in your review of the materials
21 listed in your report, that indicated that the fact
22 that these may have been manuscript policies, meaning
23 the policies issued at Alagasco, made of manuscripted
24 policies --

25 A Mm-hmm.

1 Q -- whether that -- that fact affected the
2 way in which the claims department handled this claim?

3 A The methodology of handling the claim does
4 not differ between manuscript -- and -- and
5 non-manuscript forms, but with manuscript forms,
6 particularly policies that are this old over this long
7 period of time, it does -- it's more -- it takes
8 longer, it could take longer to locate it, and it can
9 be -- it can enhance the importance of locating all of
10 the policies and endorsements.

11 Q And did you see any specific evidence in
12 the document or in the testimony you reviewed that, in
13 fact, the -- the -- the manuscript and nature of these
14 policies did affect Travelers' review of this claim?

15 A What I saw was their continual looking for
16 policies, their pol- -- a continual policy search in
17 trying to gather all the appropriate policies and to
18 try to assemble as many of the pieces together.

19 Q You understand that Ms. Dalton was using at
20 least the form of the policy that's now Exhibit 3 when
21 she did her analysis that resulted in the February 3,
22 2010 letter denying a duty to defend; is that right?

23 A That is my understanding.

24 Q Did you see any evidence in the file, in
25 anything that you reviewed, that indicated that she

1 was hampered in any way in making that decision based
2 upon the incompleteness of this policy?

3 A In -- that she -- in looking through the
4 file I didn't see any indication. I didn't see any
5 notation from her that indic- -- that said that.

6 Q Did you see any testimony that suggested
7 that?

8 A Not that I recall.

9 Q And you note on page three that "Alagasco
10 did not send policies to Travelers in response to
11 request," and I believe you say that again on page
12 six; is that right?

13 MR. WINSTON: Can you perhaps direct her to
14 where you're referring?

15 BY MR. LASETER:

16 Q Yeah, I think on page three, it's in the
17 very middle paragraph --

18 A Mm-hmm.

19 Q -- that starts with Ms. Goldman?

20 A Yes.

21 Q And then on page six it's the end of the
22 very, very last sentence on page six?

23 A Yes.

24 Q And in your understanding, is that Alagasco
25 didn't send policies to Travelers?

1 A On the 2008 claim.

2 Q Do you think that they sent them policies
3 before then?

4 A I'm not quite sure because in the 1998
5 claim, the claim file, I could not determine if the
6 policy forms if any of those came from Alagasco or if
7 they all came from Travelers.

8 The one thing that did strike me was in
9 Gail Dalton's February 3rd, 2010 letter there was, I
10 believe on the second page, toward the bottom, where
11 she exp- -- where she stated they had been trying to
12 internally verify and that --

13 Q I believe you testified a moment ago that
14 your source for Travelers' procedures in this case is
15 primarily Mr. Harris' deposition and perhaps
16 Ms. Dalton's deposition; did I remember that right?

17 A That's correct.

18 Q Have you compared Travelers' procedures to
19 other best practices or other procedures in the
20 industry?

21 A I have not done a deliberate comparison,
22 no.

23 Q Sitting here today are you aware of any way
24 in which they deviate from industry standard or best
25 practices, I should say?

1 MR. WINSTON: Object to "they." When you
2 say they are you referring to Travelers?

3 BY MR. LASETER:

4 Q Travelers' procedures, how they deviate
5 from what you described earlier as best practices?

6 MR. WINSTON: Object to the form.

7 A The -- the procedures that I am familiar
8 with of Travelers, from the review of these documents,
9 no, I am not aware.

10 Q Meaning not aware of any deviation from
11 best practices?

12 A That is correct.

13 Q Have you evaluated the degree to which
14 Travelers' claims handling activities, with regard to
15 the Alagasco matter, matched their own procedures, I
16 mean, the Travelers' procedures?

17 A The Travelers' procedures as described by
18 Robert Harris?

19 Q No, the Travelers' procedures as you
20 understand them to be?

21 A The Travelers' procedures that I understand
22 them to be, through the documents and testimony I
23 reviewed, have -- did they apply them to Al- -- the
24 Alagasco case, is that what you're asking?

25 Q I was actually asking it from the other

1 direction, although that's the right idea, my -- my
2 question is -- is -- is, are you aware of any
3 instances in which they deviated from those procedures
4 in the handling of Alagasco's claim?

5 MR. WINSTON: Object to the form.

6 A I am not aware of any deviation where they
7 -- where they deviated from those procedures, no.

8 Q And is it your opinion they followed their
9 procedures?

10 A I believe that they followed their
11 procedures.

12 Q And is that an opinion you intend to give
13 in this case?

14 A Yes.

15 Q You testified earlier, I believe, that
16 Ms. Tarczanin received the 4600 some odd page 1998
17 claims file in December of 2008; did I remember that
18 right?

19 A Yes.

20 Q What additional activities, after receiving
21 that file, did you see evidence of in terms of what
22 Travelers' claims department did to locate policies?

23 A I saw -- I saw evidence of lo- -- locating
24 policies in December of 2009 and May -- I'm sorry --
25 2008 and May of 2009 and September of 2009.

1 Q What was the evidence that you saw in May
2 of 2009?

3 A Those were, I believe, e-mails between the
4 Houston SLG operation and the S -- SLCU.

5 MR. LASETER: Mark, that please, as the
6 next exhibit.

7 (Robison Exhibit No. 4 was marked for
8 identification.)

9 BY MR. LASETER:

10 Q Showing you a document marked Exhibit 4,
11 take a moment and look that over, and my question will
12 be, once you've had a chance, if whether that's the
13 document you were recalling?

14 A Yes, it is.

15 Q And what activity do you think is recorded
16 related to searching for policies in Exhibit 4?

17 MR. WINSTON: Objection. The document
18 speaks for itself.

19 A It is an e-mail from James, James A.
20 Johnson, I believe. They go through a whole chain,
21 here, so -- but it is basically the Allan Johnson
22 requesting copies of policies from Nicole, and finding
23 and asking how she's coming with her search, so that
24 he can establish administratively what he needs to do.

25 Q And -- what -- what evidence of actual

1 activities on the part of Ms. Tarczanin do you see in
2 terms of her continued search for policies?

3 A I do not -- well, in here there is not --
4 let's see, she says on the bottom of T001358, going
5 onto T001359, that she has, "To date, I have not
6 received any confirmed Aetna policies."

7 Q And so other than the writing of the e-mail
8 reflected there, that you think the document, Exhibit
9 4, reflects any other activity searching for policy by
10 Ms. Tarczanin?

11 A I think what it reflects is that she's --
12 she hasn't received these and she still knows that she
13 needs -- that she is in the process, she still knows
14 that it's necessary to find all the policies.

15 Q Right. And so between December of 2008,
16 and this e-mail in 2009, did you see any activity, any
17 evidence of any specific activity by anyone at
18 Travelers searching for policies?

19 A I did not see any documentation of the
20 continued search.

21 Q Did you see any testimony that reflected
22 activity searching for policies between December 2008
23 and May 2009?

24 A I cannot say for certain.

25 Q Sitting here today can you recall any?

1 A Sitting here today I cannot recall any.

2 Q And aside from document number four are you
3 aware of any other evidence related to Travelers'
4 search for policy information during the month of May
5 2009?

6 A Not that I recall.

7 Q You mentioned a moment ago something in
8 September 2009, what was that?

9 A There were, if I remember, there were some
10 e-mails.

11 Q What do those e-mails reflect?

12 A As I reviewed those I believe they
13 reflected the ongoing search.

14 MR. WINSTON: You can refer to your report,
15 if you would like.

16 MR. LASETER: Yes, absolutely.

17 THE WITNESS: I don't know that --

18 BY MR. LASETER:

19 Q And perhaps to help, on page seven, at the
20 top of the page, you have a sentence that says, "It
21 continues, efforts to create coverage"; do you see
22 that?

23 A Yes, I do.

24 Q And you cite two documents, one of them is
25 T001357 through T001360, which is document number

1 four; is that right?

2 A That's correct.

3 MR. LASETER: If you would go ahead and
4 mark this as Exhibit 5.

5 (Robison Exhibit No. 5 was marked for
6 identification.)

7 BY MR. LASETER:

8 Q I'm showing you a document marked Exhibit
9 5, which bears Bates label T000271 through T000295,
10 and take a moment to look that over and then let me
11 know whether that's the document, the second document,
12 referenced on page seven of your report?

13 A Yes, it is.

14 Q Okay. And that appears to be a request for
15 a Dunn and Bradstreet business information report; is
16 that correct?

17 A That is correct.

18 Q Does that document reflect any activity on
19 the part of anyone at Travelers in the reconstruction
20 of the insurance policy information?

21 A No, it doe- -- it reflects that they
22 ordered a D and B report.

23 Q And any other evidence, that you're aware
24 of, that shows activities on the part of Travelers'
25 claims function, during September of 2009, that they

1 were trying to recreate the policy information?

2 A There was, in those e-mails, and I believe
3 it was about the same time as this, where they were
4 looking at a listing of different names that were
5 related to Alagasco or that were similar.

6 Q Is that identified anywhere in your report?

7 A No, it is not.

8 Q Any other evidence, during September of
9 2009, that you believe indicates that Travelers'
10 claims department was trying to locate policies for
11 Alagasco?

12 A Besides what I mentioned, that would be it.

13 Q Which was an e-mail identifying some
14 company names?

15 A Yes.

16 Q Between December 2008 and September 2009,
17 besides the things that you just testified to, do you
18 recall any other evidence that indicated that
19 Travelers was working on trying to secure policies on
20 behalf of Alagasco?

21 A Not that I recall.

22 Q Do you recall seeing any testimony of
23 activities during that period?

24 A Not that I recall.

25 Q Between September 2009 and February 2010,

1 do you recall seeing any evidence of Travelers'
2 efforts to locate insurance policies on behalf of
3 Alagasco?

4 A Not that I recall.

5 Q Just to be sure I'm -- I'm right, now,
6 between December 2008 and February 2010 there's the
7 e-mail marked as Exhibit 4, there's a Dunn and
8 Bradstreet request marked as Exhibit 5, and there was
9 an e-mail which you recall but you didn't cite in your
10 report that appeared to identify some company names;
11 is that right?

12 A That's what I stated.

13 Q And is that a complete list of all the
14 evidence of activities that you saw of Travelers'
15 efforts to reconstruct the insurance policies on
16 behalf of Alagasco in this matter, between 2008,
17 December 2008 and February of 2010?

18 A And the documents that I reviewed, those
19 are the ones that I recall.

20 Q And in the testimony you reviewed, did you
21 see anything in addition to that?

22 A Not that I recall.

23 Q And has anybody outside of the testimony
24 that you reviewed or the documents told you about any
25 activities?

1 A No.

2 Q Have you ever seen the Munich Re Book
3 before this case?

4 A No, I have not.

5 Q Have you ever seen anything like the Munich
6 Re Book with regard to environmental coverage issues
7 before this case?

8 A As the reinsurers that I -- in the
9 companies that I have worked for, the reinsurers was
10 Gen Re, and Gen Re had published a number of similar
11 books.

12 Q And do you recall seeing any Gen Re Book
13 that analyzed environmental coverage issues?

14 A I do not recall, specifically.

15 Q Do you recall ever using any such book in
16 the course of handling a claim?

17 A I'm sure I did, I can't recall the specific
18 claim.

19 Q Which company was Gen Re the reinsurer for?

20 MR. WINSTON: Objection, vague.

21 BY MR. LASETER:

22 Q Let me ask a better question. You
23 identified General Re as the reinsurer from one of the
24 companies that previously worked for; is that right?

25 A That is correct.

1 Q Which company was that?

2 A DaimlerChrysler.

3 Q So if you resorted to a Gen Re compendium
4 of environmental coverage cases it would have been
5 while you were working at Chrysler or DaimlerChrysler
6 Insurance Company?

7 A That's the one I recall.

8 Q Do you recall any others?

9 A From any other companies?

10 Q Any other compendiums of insurance coverage
11 cases that you might have reviewed in connection with
12 a claim?

13 A From time to time -- from time to time we
14 get -- attorney's firms will put out compe- --
15 compendiums of various things, I know I have looked at
16 that for UM/UIM issues.

17 Q That's uninsured motorists?

18 A Uninsured -- und- -- underinsured and
19 uninsured motorists.

20 Q Do you recall one for environmental
21 matters?

22 A I do not recall a specific one for
23 environmental matters.

24 Q I'm on page nine of the next to last
25 paragraph, this is referring to whether or not a PRP

1 letter or notice from EPA is considered a suit under
2 policies in Alabama, do you understand that, that
3 would be the topic of this?

4 A Oh, yes.

5 Q Uh-huh, and the second sentence there, you
6 say this was a fairly debatable issue; do you see
7 that?

8 A Yes, I do.

9 Q That's your opinion?

10 A That's my opinion.

11 Q What's the basis for that?

12 A The basis for that is that Travelers had --
13 that Travelers had looked at its resources, they had
14 consulted -- with -- with counsel, the state of
15 Alabama had -- the Supreme Court had not ruled one way
16 or the other on this, on this issue, and so that it --
17 there wasn't direction from that, and that meant --
18 meant that -- that it was a debatable issue and could,
19 now that we look back at it, that Travelers looked at
20 all the issues involved and made their decision
21 accordingly.

22 Q How do you know that Alabama had not ruled
23 on that issue?

24 A How -- how do I know that?

25 Q How do you, Ms. Robison, know that

1 Travelers -- that Alabama law had not -- there's not a
2 case in Alabama on that issue?

3 A I -- in -- in reviewing the Munich Re and
4 doing -- and being advised, and being advised.

5 Q Being advised by counsel for Travelers?

6 A By counsel, yes.

7 Q Did you personally review the Munich Re
8 Book to determine whether or not Alabama had rules on
9 the issue of whether a PRP letter is a suit?

10 A I did review the PRP -- I'm sorry -- I did
11 review the Munich Re Book.

12 Q And you reviewed it for purposes of
13 determining whether or not it says that Alabama has
14 ruled on the issue of whether or not the PRP letter is
15 a suit?

16 A I -- I reviewed the Munich Re Book to see
17 what the Munich Re Book said.

18 Q And I'm asking you if reviewed it for
19 purposes of determining whether or not a PRP letter is
20 a suit in Alabama.

21 I'm not asking you whether or not
22 Travelers' counsel told you that, I'm asking whether
23 you personally reviewed the Munich Re Book to
24 determine that, yourself?

25 A I looked at the Munich Re Book to see what

1 the Munich Re Book said on that, yes.

2 Q And -- you -- you reviewed on the issue of
3 whether a PRP letter is a suit, you reviewed the
4 Munich Re Book?

5 MR. WINSTON: Objection, asked and
6 answered. It's becoming argumentative.

7 A I reviewed what was in the Munich Re Book
8 and looked at the notations and the symbols, yes.

9 Q And besides your review of the Munich Re
10 Book, that you just testified to, and having counsel
11 for Travelers discuss with you that issue, any other
12 source that you have for your understanding as to
13 whether or not that was a debatable issue?

14 MR. WINSTON: Object to the extent you
15 mischaracterize her testimony. You can go ahead and
16 answer.

17 A I did not do -- a -- a legal research on
18 that, no, I did not do a legal research.

19 Q I'm just trying to be sure I understand --
20 the -- the -- the source for your sentence, it says in
21 your report, on page nine, this was a fairly debatable
22 issue.

23 One source you said is your review of the
24 Munich Re Book; is that right?

25 A That's correct.

1 Q And the second source is discussions with
2 counsel for Travelers; is that right?

3 A That's correct.

4 Q Any others?

5 A That would be -- besides any of the
6 testimony that the depositions I reviewed, that would
7 be it.

8 Q So a third possibility would be -- the --
9 the views of Travelers' claims department?

10 A Correct.

11 Q Okay. So the three things in there that
12 you reviewed, the Munich Re Book, your discussion with
13 counsel for Travelers, and the opinions of Travelers'
14 claims department; is that right?

15 A Correct.

16 Q Is there anything else?

17 MR. WINSTON: Objection, asked and
18 answered.

19 A Not that I recall.

20 Q We talked a minute ago about the activities
21 that Travelers' claims department undertook with
22 regard to the reconstruction of policies between
23 December of 2008 and February of 2010, and I want to
24 move away from the question of efforts to reconstruct
25 the insurance policies and ask if you saw any evidence

1 that they were doing anything else between December
2 2008 and February 2010, besides what was reflected in
3 the Exhibit No. 5 that you already have in front of
4 you?

5 A Yes.

6 Q What were those things?

7 A They -- they promptly -- they communicated
8 with Alagasco.

9 Q So they -- they wrote letters, you mean?

10 A They -- they -- they wrote letters to
11 Alagasco, they talked to Alagasco's attornies, they
12 received information from Alagasco.

13 Q Anything else?

14 A As far as documents, that's -- that -- and
15 I did see evidence of initiating -- assigning an
16 investigator.

17 Q When was that?

18 A And that was after the February 3rd, 2008,
19 2010 letter.

20 Q So that would not be between December 2008
21 and February 2010?

22 A I believe you're -- that's correct, if
23 we're looking at the February, I'm not quite sure, but
24 it was after the 2003/2010 letter.

25 Q And to be clear, I think you meant February

1 3rd, 2010?

2 A Oh, February 3rd, I'm sorry.

3 Q That's fine. All right. So the things
4 we've identified so far is that Travelers wrote
5 letters to Alagasco, they had phone calls, and they
6 received information from Alagasco. Anything else
7 that Travelers' claims department did between December
8 2008 and February 2010?

9 MR. WINSTON: Let me just object that the
10 claim file and documents there speak for themselves.
11 I assume what you're asking her, as she sits here
12 today, is can she think of anything else.

13 A And you're -- you're ask -- if we're
14 talking about what I reviewed in the documents?

15 Q I'm -- to be clear, I'm -- I'm asking you
16 for the basis for your opinion that Ala- -- that
17 Travelers was conducting a review of this claim
18 between December 2008 and February 2010.

19 And so far you've identified that they
20 wrote letters, they had phone calls, and they received
21 information, and in addition to the activities that we
22 discussed a moment ago, related to the reconstruction
23 of policies, and I'm trying to find out if there's
24 anything that stands behind your view that they were
25 reviewing this matter between December 2008 and

1 February 2010?

2 A And in December 2010 they -- they received
3 --

4 Q You mean 2008?

5 A I'm sorry, thank you, in December of 2008
6 Nicole Tarczanin received docu- -- 4 -- 4600 -- over
7 4600 pages in documents. She testified that she --
8 she reviewed, she read each and every page, so that,
9 yes, there's evidence of that.

10 There is evidence, as I stated, of an
11 ongoing policy search in the file.

12 Q And that's the one we just testified to?

13 A That's the one we just talked about. There
14 -- there is evidence of -- with Alagasco sending in
15 information that would -- that takes time to read,
16 absorb, decipher, decide, of communicating, responding
17 based on that information sent back, throughout this
18 time period, and -- and continuing the policy, as I
19 said, continuing -- reading all the information,
20 continuing the policy search, getting the information
21 from Alagasco during this time period.

22 During this time period there was a period
23 where Alagasco, there was nothing from Alagasco for
24 five months, so they -- they promptly responded to all
25 the communication that Alagasco sent. They promptly

1 addressed it.

2 Q Anything else?

3 MR. WINSTON: Objection, asked and
4 answered.

5 A That would be what I saw.

6 Q You reviewed Ms. Tarczanin's deposition?

7 A Yes, I did.

8 Q Do you believe that she testified that she
9 could remember reading those 4600 pages?

10 A My recollection is she testified that she
11 would have read all the pages. She could not remember
12 reading each and every page.

13 Q Do you think that she could remember
14 reading any of those pages, based on her testimony?

15 A I would have to review that testimony again
16 to answer that question.

17 Q Mm-hmm. Is it possible that she just
18 testified that she merely believes that she would have
19 reviewed every page?

20 MR. WINSTON: Well, objection, anything's
21 possible. You can answer that.

22 A I believe she said that it was her practice
23 and procedure to review all the documents.

24 Q And not that she knows for certain that she
25 did; is that right?

1 MR. WINSTON: Object to the form.

2 A I believe she testified something that she
3 could not recall if -- she -- she could not recall
4 that particular one.

5 Q That -- so you don't know how much time
6 Ms. Tarczanin might have spent, in December 2008,
7 reviewing those 4600 pages?

8 MR. WINSTON: Object to the form.

9 MR. LASETER: Help me with that objection,
10 Frank?

11 MR. WINSTON: You just made a statement.
12 You didn't even ask her a question.

13 MR. LASETER: Oh, I suppose that's fair.

14 BY MR. LASETER:

15 Q Sitting here today, Ms. Robison, do you
16 have any understanding as to the amount of time
17 Ms. Tarczanin would have spent in December 2008
18 reviewing the 4600 pages of the 1998 claims file?

19 A I have an understanding of how much time it
20 would take a person to go through that, yes.

21 Q Which is about how much time it took you?

22 A No. I would expect the person to go
23 through it much, much, much more thoroughly than it
24 took me.

25 Q Why would that be?

1 A Because they would be -- I was looking at
2 documents relating to the handling of the 2008 -- '8
3 matter, and these were -- and there were a lot of
4 documents in there relating to the 2000 -- or, I'm
5 sorry -- the 1999 case, and I was not in the process
6 of trying to recreate a file from all the
7 underwriting, writing information that was in there.

8 So I would expect it would -- take -- take
9 a person who was doing that initial go-through a lot,
10 lot, lot longer time than it would take me.

11 Q And -- and sitting here today, do you have
12 any actual information with regard to the amount of
13 time Ms. Tarczanin spent in December 2008 on that
14 matter?

15 A I do not have any specific information on
16 the exact number of hours or minutes she spent looking
17 at it.

18 Q And the same thing would be true with
19 regard to January 2009?

20 A The same thing would be true there.

21 MR. WINSTON: I don't want to interrupt
22 your flow, but we're getting close to another break
23 time, plus I don't know how much longer you have,
24 whether you would consider lunch or not?

25 MR. LASETER: Well, let's take a break. We

1 can go off the record.

2 (Recess.)

3 MR. LASETER: Back on the record.

4 (Robison Exhibit No. 6 was marked for
5 identification.)

6 BY MR. LASETER:

7 Q I'm going to show you what's now marked
8 Exhibit 6, ask you to take a moment and look at that,
9 and I'm going to make reference to page four of your
10 report.

11 And once you've had a moment to look that
12 over, my question would be whether this letter is the
13 letter you referred to on page four of your report?

14 A Yes.

15 Q And you quoted a sentence on your page four
16 of your report that comes from page two of the letter
17 that reads, "Therefore, we cannot determine our
18 potential coverage obligations to Alagasco unless or
19 until such a claim or lawsuit's received"; do you see
20 that?

21 A Yes.

22 Q And that is a sentence that follows on an
23 observation by Ms. Tarczanin that they -- request for
24 information is not a formal claim; is that correct?

25 A Yes.

1 Q And then in your report you say, "In my
2 opinion, this was a reasonable statement"; do you see
3 that?

4 A Yes.

5 Q And is that your opinion?

6 A Yes.

7 Q What's the basis for that opinion?

8 A The basis for that opinion is that the --
9 at this point in time the US EPA is asking for
10 information and had not presented a claim for damages,
11 it was -- it was simply looking for information,
12 stating that there would be a claim.

13 Q Did you resort to any reference materials
14 to make that evaluation, meaning the evaluation this
15 was a reasonable statement?

16 A No.

17 Q Okay. Did you review the information
18 requested?

19 A Yes.

20 Q So to be sure I'm understanding, the basis
21 for your opinion is that in your review of the
22 information request it didn't make a demand for
23 damages, is that -- did I understand that right?

24 A It didn't present a claim, it was asking
25 for information.

1 Q And -- and other than your review of the
2 information request do you have any other basis for
3 your review that this was a reasonable position on the
4 part of Ms. Tarczanin?

5 A It would be the -- it would be my -- based
6 on my past experiences in claims handling and on the
7 documents that I reviewed.

8 Q In regard to your past experience, I
9 believe you testified earlier that you couldn't recall
10 a particular instance where you had to consider a
11 request for information; did I get that right?

12 A That's correct.

13 Q Can you recall any similar situation where
14 you reached a determination that something wasn't a
15 formal claim?

16 MR. WINSTON: Objection, vague.

17 A Yes, throughout claims handling, my claims
18 experience, we will have times where an insured says,
19 particularly, like, dealerships, I am being, you know,
20 this department is asking me these questions and, you
21 know, and I think, you know, this may be a claim. And
22 we'll say, you know, you need to respond. And then
23 when a claim is presented you'll notify us.

24 Q Any others come to mind?

25 A That's -- that -- those are the ones that

1 stick out in my mind right now.

2 Q On page nine of your report, you state that
3 Ms. Dalton had consulted with counsel, this is in the
4 next to last full paragraph on page nine, when do you
5 understand that she consulted with counsel?

6 A It is my recall, from reading her
7 deposition, that she consulted with counsel prior to
8 the February 3rd, 2010 letter.

9 Q And is your understanding that she
10 consulted with counsel entirely from her deposition?

11 A Yes. Excuse me. That's what she states in
12 her deposition but then I -- and Robert Harris'
13 deposition, he also talks about their procedure and
14 how they go about it.

15 Q And do you think anything in Mr. Harris'
16 deposition confirmed or denied that Ms. Dalton
17 actually did see counsel?

18 A Mr. Harris' deposition described their
19 process.

20 Q So he was just describing the process, he
21 was not testifying one way or the other with regard to
22 whether or not Ms. Dalton actually followed that
23 process; is that right?

24 A He was describing the process, correct.

25 Q And -- and was not saying, one way or the

1 other, whether or not Ms. Dalton followed it?

2 A From what I recall, correct.

3 Q I'll ask you to turn to Exhibit C of your
4 deposition, which is your list of testimony, and
5 initial question, are the matters that are reflected
6 on Exhibit C also included in the matters listed on
7 Exhibit A under the category of expert witness files?

8 A They should be, let me double check.

9 Q And it looks like I'm now -- I see that it
10 looks like that's correct. Turning to Exhibit C, what
11 was the matter, the Kenneth John Nardelli matter
12 about?

13 A That was a claims practices issue
14 concerning a recovered stolen vehicle.

15 Q Who retained you in that matter?

16 A The Metropolitan.

17 Q Was there a question of bad faith in that
18 case?

19 A Yes.

20 Q What happened to that case?

21 A That case went to trial with an adverse
22 verdict that was later significantly reduced.

23 Q You did not testify at trial?

24 A I testified at trial, yes.

25 Q Oh, I'm sorry, it's down below?

1 A Yes.

2 Q I see.

3 A Yes.

4 Q Okay. What is the -- was the David V.
5 Oakes case about?

6 A The David V. Oakes case was an underinsured
7 motorists case. I was retained by Allstate.

8 Q Was that a claims handling case?

9 A That involved claims handling.

10 Q Allegation of bad faith?

11 A Yes, sir.

12 Q And how was that case resolved?

13 A That case was resolved through settlement.

14 Q Do you recall who counsel was in that case?

15 A They're out of Lexington, Kentucky.

16 MR. WINSTON: Are we talking for policy
17 holders or for insurance?

18 BY MR. LASETER:

19 Q Either side?

20 A Oh, oh, either side, counsel is out of --
21 out of -- and I cannot -- I'm sorry, I cannot remember
22 their name, David V. Oakes was an attorney but he did
23 not represent himself.

24 Q And you can't remember who represented
25 Allstate?

1 A I should but I don't.

2 Q That's all right. How about the Michael
3 and let's call it --

4 A Scheidecker.

5 Q -- Scheidecker, which is
6 S-c-h-e-i-d-e-c-k-e-r, case, what was that about?

7 A That was a negligent infliction of an
8 emotional distress case in Alaska, it involved claims
9 handling and faith allegations, but more so to the
10 applicability of the negligent infliction of emotional
11 distress. Allstate Insurance Company retained -- I
12 was retained by them, that case was resolved through
13 settlement.

14 Q Cecil Nevels?

15 A Cecil Nevels is a bodily injury, Cecil
16 Nevels is a bodily injury case, it's in the state of
17 Kentucky and with the same firm as the David V. Oakes,
18 and I was retained by Deerbrook Insurance Company.

19 Q Is Deerbrook related to Allstate in any
20 way?

21 A Deerbrook is a subsidiary of Allstate.

22 Q Was there -- is there a bad faith issue
23 there?

24 A There's a bad faith issue there. That one
25 is not yet resolved.

1 Q Jannell Williams?

2 A Jannell Williams -- is a -- is a case
3 involving a single vehicle truck, tractor-trailer
4 accident, where the two drivers were, after -- the --
5 the rig had the accident, it caught fire and the two
6 drivers were burned to death.

7 I am re- -- I was retained by Jannell
8 Williams.

9 Q What's the issue there?

10 A The issue on that is concerning -- the --
11 the -- the claims handling of the evidence, spoliation
12 of evidence.

13 Q Is that evidence of the underlying
14 accident?

15 A Of the underlying accident, that one is not
16 resolved, either.

17 Q I may have already asked you this, who was
18 counsel for Metropolitan Group in the Nardelli case?

19 A Tim Strong, Steptoe and Johnson, out of
20 Phoenix, Arizona.

21 Q Do you recall who represented Mr. Nardelli?

22 A No, I do not.

23 Q Have you been retained by either the firm
24 Steptoe and Johnson or about Steptoe's clients in
25 other matters?

1 A In other matters? Let me take a look.

2 Q Yeah.

3 A If you don't mind.

4 Q Absolutely.

5 A No.

6 MR. LASETER: No further questions.

7 MR. WINSTON: Okay, we'll read and sign.

8 Can we get an expedited transcript?

9 (Signature having not been waived, the
10 deposition of Kathleen Robison was concluded at 12:51
11 p.m.)

12 ACKNOWLEDGMENT OF DEPONENT

13 I, Kathleen Robison, do hereby acknowledge that I
14 have read and examined the foregoing testimony, and
15 the same is a true, correct and complete transcription
16 of the testimony given by me and any corrections
17 appear on the attached Errata sheet signed by me.

18

19

20 (DATE)

(SIGNATURE)

21

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25

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Cassandra E. Ellis, Registered Professional
3 Reporter, the officer before whom the foregoing
4 proceedings were taken, do hereby certify that the
5 foregoing transcript is a true and correct record of
6 the proceedings; that said proceedings were taken by
7 me stenographically and thereafter reduced to
8 typewriting under my supervision; and that I am
9 neither counsel for, related to, nor employed by any
10 of the parties to this case and have no interest,
11 financial or otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my hand
13 and affixed my notarial seal this 3rd day of November
14 2011.

15 My commission expires:

16 November 30, 2012
17
18

19 _____
20 NOTARY PUBLIC IN AND FOR
21 THE DISTRICT OF COLUMBIA
22
23
24
25

Alabama Gas Corporation v. Travelers Casualty, et al.
Kathleen Robison

2:10-CV-1840-IPS
November 2, 2011

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1 E R R A T A S H E E T

2 IN RE: Alabama Gas v. Travelers Casualty

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